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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 52

JAMES A. DOMBROWSKI, ET AL., APPELLANTS,

vs.

JAMES H. PFISTER, ETC., ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

FILED MARCH 23, 1964

PROBABLE JURISDICTION NOTED JUNE 15, 1964

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[fol. 1]

[File endorsement omitted]

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION**

No. 14019

Division B

**JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE
EDUCATIONAL FUND, INC., Plaintiffs,**

—against—

**JAMES H. PFISTER, individually and as Chairman of the
Joint Legislative Committee on UnAmerican Activities
of the Louisiana Legislature, RUSSELL R. WILLIE, indi-
vidually and as Major of the Louisiana State Police
Department, JIMMIE H. DAVIS, individually and as Gov-
ernor of the State of Louisiana, JACK P. F. GREMILLION,
individually and as Attorney General of the State of
Louisiana, COLONEL THOMAS D. BURBANK, individually
and as Commanding Officer of the Division of Louisiana
State Police, and JIM GARRISON, individually and as Dis-
trict Attorney for the Parish of Orleans, State of Loui-
siana, Defendants.**

COMPLAINT—Filed November 12, 1963

The plaintiffs for their verified complaint allege:

Parties

1. James A. Dombrowski is a citizen of the State of Louisiana and of the United States.

2. Southern Conference Educational Fund, Inc., is a corporation organized under the laws of the State of Tennessee, maintaining an office for business purposes in the State of Louisiana, whose purpose is to help to secure to Negro citizens the rights guaranteed to them under the United States Constitution and to end all forms of racial segrega-

tion and discrimination in the interest of Negro and white citizens of the Southern states.

3. Defendant James H. Pfister is a Louisiana State Representative and Chairman of the Joint Legislative Committee [fol. 2] on UnAmerican Activities of the Louisiana Legislature. He is sued individually and in his capacity as Chairman of said Committee. He is a citizen of the State of Louisiana.

4. Defendant Russell R. Willie is a Major in the Louisiana State Police Department. He is sued individually and in his capacity as Major of Louisiana State Police. He is a citizen of the State of Louisiana.

5. Defendant Jimmie H. Davis is Governor of the State of Louisiana. He is sued individually and in his capacity as Governor. He is a citizen of the State of Louisiana.

6. Defendant Jack P. F. Gremillion is Attorney General of the State of Louisiana. He is sued individually and in his capacity as Attorney General. He is a citizen of the State of Louisiana.

7. Defendant Thomas D. Burbank is Commanding Officer of the Division of Louisiana State Police. He is sued individually and in his capacity as Commanding Officer of the Division of State Police. He is a citizen of the State of Louisiana.

8. Defendant Jim Garrison is District Attorney for the Parish of Orleans, State of Louisiana. He is sued individually and in his capacity as District Attorney for the Parish of Orleans. He is a citizen of the State of Louisiana.

Jurisdiction of the Court

9. The jurisdiction of the Court over the Complaint arises under Title 28 U.S.C. 1331 (a), 1343 (3, 4), 2201, 2202, 2281; Title 42, U.S.C. 1971, 1981, 1983, 1985, and under the Constitution of the United States and in particular the First, Fourth, Fifth and Fourteenth Amendments thereto.

10. The amount in controversy, exclusive of interest and costs exceeds the sum or value of \$10,000.00.

[fol. 3]

The Cause of Action

11. "The defendants herein, under color of certain statutes of the State of Louisiana have entered into a plan or conspiracy with other persons to the plaintiffs unknown to subject or cause to be subjected the plaintiffs, citizens of the United States, to the deprivation of rights, privileges and immunities secured to them by the Constitution and laws of the United States.

12. Pursuant to this plan or conspiracy the defendants have attempted to and threaten to continue to attempt to prosecute the individual plaintiffs under the color and authority of certain state statutes, namely Louisiana Revised Statutes 14:358 et seq. and 14:390 et seq.

13. Defendants Pfister and Willie without any basis whatsoever in fact attempted to institute the prosecution of the individual plaintiffs by obtaining on October 2, 1963, certain warrants of arrest as well as search warrants based upon sworn affidavits alleging that the plaintiffs had conspired to violate the aforementioned statutes. These arrest and search warrants were served and acted upon by police officers under the control of the defendants herein. Despite the fact that the warrants of arrest were summarily vacated by a Judge of the Criminal District Court for the Parish of Orleans upon a holding that there was no probable cause for the issuance of the warrants, defendant Pfister nevertheless threatened and continues to threaten to attempt to obtain new prosecutions of the plaintiffs and to hold legislative hearings under the same statutes.

14. Specifically on Friday, November 8, 1963, the Joint Legislative Committee on UnAmerican Activities, of the [fol. 4] Louisiana Legislature held an "open hearing" in Baton Rouge, Louisiana, at which hearing defendant Pfister, as well as counsel for the said committee, Rogers, utilized photostats of certain documents seized on October 4, 1963, under the alleged authority of the aforesaid search warrants. The Committee thereupon adopted a resolution

naming plaintiff corporation as a "communist front" and further calling upon defendant Garrison to prosecute officials of this corporation including plaintiff Dombrowski, under the provisions of the statutes herein cited. Pfister and Rogers have further publicly announced their intention of delivering to Garrison copies of documents illegally seized from the plaintiffs for the purpose of presenting the said copies to the Orleans Parish Grand Jury and for institution of criminal proceedings under the same statutes.

15. Louisiana Revised Statutes 14:358 through 14:388 and Louisiana Revised Statutes 14:390 through 14:390.5 are void and illegal on their face as applied to the plaintiffs herein, in that they violate the Constitution of the United States and in particular the First, Fourth, Fifth, Eighth and Fourteenth Amendments thereto. These state statutes violate the fundamental guarantees of free speech, press, assembly and the right to petition the government for a redress of grievances. They violate the guarantee of due process of law in that they are vague and indefinite and fail to meet the requirement of certainty in criminal statutes. They violate the prohibitions against ex post facto legislation and bills of attainder and represent an unconstitutional delegation of legislative power, all in violation of the Constitution of the United States.

[Pol. 5] 16. The aforesaid state statutes are likewise void and illegal and of no force or effect in that they invade areas pre-empted to the exclusive jurisdiction of the United States by statutes and laws enacted by the Congress of the United States.

17. Pursuant to the aforesaid conspiracy and plan the defendants have threatened and continue to threaten to enforce the said unconstitutional void and illegal state statutes against the plaintiffs herein for the sole purpose of subjecting and causing to be subjected the plaintiffs and the members, friends and supporters of the plaintiff corporation to the deprivation of rights, privileges and immunities secured to them by the Constitution and laws of the United States.

18. The plaintiffs and the members, friends and supporters of the plaintiff corporation have been attempting through peaceful and non-violent means to achieve the elimination of all forms of racial segregation in the states of the South and the State of Louisiana and to assist and encourage Negro citizens to exercise their rights to register and vote in federal and state elections. These objectives are specifically protected and guaranteed by the Constitution of the United States and the Thirteenth, Fourteenth and Fifteenth Amendments thereto. In their constant efforts to achieve these constitutionally protected efforts, the plaintiffs and the members, friends and supporters of the plaintiff corporation have been attempting to exercise rights guaranteed under the First and Fourteenth Amendments to freedom of speech, press, assembly and association and the right to assemble, associate and petition for a redress of grievances.

19. Unless this Court restrain the operation and enforcement of these void, invalid and unconstitutional state [fol. 6] statutes, the plaintiffs, and the members, friends and supporters of the plaintiff corporation will suffer immediate and irreparable injury.

The sole purpose, intention and effect of threatening to enforce said statute is to deter, intimidate, hinder and prevent the plaintiffs and the members, friends and supporters of plaintiff corporation from exercising their fundamental constitutional rights guaranteed under the First and Fourteenth Amendments in their efforts to enforce the equality under the law guaranteed by the Thirteenth, Fourteenth and Fifteenth Amendments.

Accordingly, unless this Court restrains the operation and enforcement of these void, invalid and unconstitutional state statutes, the plaintiffs and the members, friends and supporters of the plaintiff corporation will continue to suffer the most serious, immediate and irreparable injury in that they will continue to be deterred, intimidated, hindered and prevented from exercising elementary and fundamental Federal constitutional rights.

20. Plaintiffs have no adequate remedy at law.

Wherefore, plaintiffs pray for the following relief:

1. That pursuant to Title 28 U.S.C. 2281 and 2284 a three-judge Federal District Court be immediately convened to hear and determine this proceeding;

2. That a permanent injunction issue

(a) restraining the defendants, their agents and attorneys from the enforcement, operation or execution of Louisiana Revised Statutes 14:390 through 14:390.5 and Louisiana Revised Statutes [fol. 7] 14:358 through 14:388, and

(b) restraining the defendants, their agents, and attorneys from impeding, intimidating, hindering and preventing the plaintiffs or members, friends and supporters of plaintiff corporation from exercising the rights, privileges and immunities guaranteed to them by the Constitution and laws of the United States.

3. That a Declaratory Judgment issue declaring that Louisiana Revised Statutes 14:390 through 14:390.5, and Louisiana Revised Statutes 14:358 through 14:388 are void on their face, null and void as violative of the Constitution of the United States.

4. That pending the hearing and determination of the prayers for permanent relief an interlocutory injunction issue restraining the defendants, their agents, attorneys and all others acting in concert with them from enforcing in any way the provisions of Louisiana Revised Statutes 14:358 through 14:388 and Louisiana Revised Statutes 14:390 through 14:390.5 or for instituting or undertaking any proceedings whatsoever pursuant to said statutes against the plaintiffs herein.

Plaintiffs respectfully pray that the above relief be granted.

Kunstler, Kunstler & Kinoy, 511 Fifth Avenue, New York 17, New York; and Milton E. Brener, 1304 National Bank of Commerce Bldg., New Orleans 12, Louisiana, Attorneys for Plaintiffs, by Milton E. Brener

[fol. 8]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 14019

Division B

[Title omitted]

MOTION FOR CONVENING OF THREE-JUDGE COURT—
Filed November 12, 1963

The plaintiffs, James A. Dombrowski and Southern Conference Educational Fund, Inc., through their attorneys move that pursuant to Title 28 U.S.C. 2281 and 2284, a three-judge Federal District Court be immediately convened to hear and determine this proceeding; that pending the hearing and determination of the prayers for permanent relief, an interlocutory injunction issue restraining the defendants, their agents, attorneys and all others acting in concert with them from enforcing in any way the provisions of Louisiana Revised Statutes 14:358 through 14:388 and Louisiana Revised Statutes 14:390 through 14:390.5 or from instituting or undertaking any proceedings whatsoever pursuant to said statutes against the plaintiffs herein.

Milton E. Brener

[fol. 9] . [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
Civil Action No. 14,019

[Title omitted]

ORDER CONVENING THREE-JUDGE COURT—
November 14, 1963

The Honorable Frank B. Ellis, United States District Judge for the Eastern District of Louisiana, to whom an application for injunction and other relief has been presented in the above-styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I, Elbert P. Tuttle, Chief Judge of the Fifth Circuit, hereby designate the Honorable John Minor Wisdom, United States Circuit Judge, and the Honorable E. Gordon West, United States District Judge for the Eastern District of Louisiana, to serve with Judge Ellis as members of, and with him to constitute the said court to hear and determine the action.

Witness my hand this 14th day of November, 1963.

Elbert P. Tuttle, Chief Judge, Fifth Circuit.

[fol. 10] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 14019

Division "B"

[Title omitted]

MOTION OF BENJAMIN E. SMITH AND BRUCE C. WALTZER
AND ORDER FOR TEMPORARY RESTRAINING ORDER—
November 18, 1963

On Motion of Benjamin E. Smith and Bruce C. Waltzer,
Through Hubert, Baldwin & Zibilich, attorneys for plain-
tiffs herein, and

On Suggesting to the Court that plaintiffs Benjamin E.
Smith and Bruce C. Waltzer, are now faced with the threat
of imminent prosecution in the Criminal District Court for
the Parish of Orleans under the provisions of R.S. 14:358
et seq. and 14:390 et seq. previously alleged herein to be
unconstitutional and

On Further Suggesting to the Court that defendants
herein intend immediate transfer, use and utilization of
various documents seized from defendants under the pro-
visions of the said statutes, and

On Further Suggesting to the Court that the Honorable
[fol. 11] Malcolm V. O'Hara, Judge of the Criminal District
Court for the Parish of Orleans and in charge of the pres-
ent Grand Jury for the Parish of Orleans has pursuant to
the said statutes instructed the Grand Jury to determine
whether any violations are existent and

On Further Suggesting that the said Grand Jury has or
will shortly have in its possession certain documents be-
longing to plaintiffs;

It Is Ordered by the Court that defendants James H. Pfister, Russell R. Willie, Jimmie H. Davis, Jack P. F. Gremillion, Colonel Thomas D. Burbank and Jim Garrison individually and in their official capacities, and others acting in concert with them are hereby restrained and prohibited from in any way taking any prosecutive action against plaintiffs under the provisions of the said statutes or for any violation or alleged violation of said statutes, or from presenting evidence to the Orleans Parish Grand Jury for the purpose of showing a violation of said statutes.

It Is Further Ordered by the Court that the defendants, the Orleans Parish Grand Jury, Harry Plant, Foreman, John Leslie Bennett, John Donelson Eagan, Andrew F. Gonen, Jr., Rufus Louis Matthews, John Thomas McNamara, George Josiah Marsh, Joseph Hillary Morvant, Lloyd H. Pierre, James Craig Roth, Robert Mallard Seago, Sr., and Edward Alvis Hodge, individually and in their official capacities, and others acting in concert with them are hereby restrained and prohibited from in any way taking any prosecutive action against plaintiffs under the provisions of R.S. 14:358 et seq and R.S. 14:390 et seq, or for any violations or alleged violations of said statutes or from considering any evidence concerning violations of said [fol. 12] statutes as members of the Grand Jury.

It Is Ordered by the Court that the defendant, the Honorable Malcolm V. O'Hara, individually and in his official capacity, and others acting in concert with him are hereby restrained and prohibited from in any way taking any prosecutive action against plaintiffs under the provisions of the said aforementioned statutes or for any violations of alleged violations of said statutes or from further instructing the Grand Jury for the Parish of Orleans to investigate any alleged violations of the said statutes.

This order issued pending a hearing on the petition for intervention and on the motion for a preliminary injunction, but shall expire within ten (10) days by its own terms unless sooner rescinded or otherwise extended.

New Orleans, Louisiana, this 18th day of November, 1963.

John Minor Wisdom, Judge.

Respectfully submitted:

Hubert, Baldwin & Zibilich, 300 Oil & Gas Building, 1100 Tulane Avenue, New Orleans, Louisiana, Ja 5-2156, By: Robert Zibilich.

[fol. 13]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

Civil Action No. 14019

Division "B"

[Title omitted]

MOTION OF MILTON E. BRENER AND ORDER FOR TEMPORARY
RESTRAINING ORDER—November 18, 1963

On Motion of Milton E. Brener, attorney for plaintiffs herein, and

On Suggesting to the Court that plaintiff, James A. Dombrowski, is now faced with the threat of imminent prosecution in the Criminal District Court for the Parish of Orleans under the provisions of R. S. 14:358 et seq. and 14:390 et seq., previously alleged herein to be unconstitutional, and

On Further Suggesting to the Court that defendants herein intend immediate transfer, use and utilization of various documents seized from defendants under the provisions of the said statutes, and

On Further Suggesting to the Court that defendants plan to present copies of said evidence as well as other evi-

dence to the Orleans Parish Grand Jury with a view toward criminal prosecution under said statutes of plaintiffs, and that plaintiffs will suffer irreparable injury unless a temporary restraining order issue herein pending hearing and determination of the application for interlocutory relief prohibiting and restraining the defendants and others acting in concert with them from in any manner taking any prosecutive action against plaintiffs under the provisions [fol. 14] of the said statutes or for any violation or alleged violation of the said statutes, or from presenting evidence to the Orleans Parish Grand Jury for the purpose of showing a violation of the said statutes,

It Is Ordered by the Court that defendants James H. Pfister, Russell R. Willie, Jimmie H. Davis, Jack P. F. Gremillion, Colonel Thomas D. Burbank and Jim Garrison, individually and in their official capacities, and others act-
~~including the Orleans Parish Grand Jury~~
 ing in concert with them/ are hereby restrained and prohibited from in any way taking any prosecutive action against plaintiffs under the provisions of the said statutes or for any violation or alleged violation of said statutes, or from presenting evidence to the Orleans Parish Grand Jury for the purpose of showing a violation of said statutes.

This order is issued pending a hearing on the motion for a preliminary injunction, but shall expire within ten (10) days by its own terms unless sooner rescinded, or otherwise extended.

New Orleans, Louisiana, this 18 day of November, 1963.

John Minor Wisdom, Judge.

Respectfully submitted:

Milton E. Brener, Arthur Kinoy, Kunstler Kunstler and Kinoy.

[fol. 15]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 14019

Division B

[Title omitted]

ANSWER—Filed December 4, 1963

Now into Court through the undersigned, Assistant District Attorney in and for the Parish of Orleans, State of Louisiana comes Jim Garrison, individually and as District Attorney in and for the Parish of Orleans, State of Louisiana, and in answer to plaintiff's numbered allegations contained in their complaint filed in the above entitled and numbered cause, respondent avers:

Parties

1. Denied for lack of sufficient information to justify a belief.

2. Denied for lack of sufficient information to justify a belief. Respondent calls for strict proof. Respondent further avers that Southern Conference Educational Fund, Inc. has as its principal objective the advancement of the interests of the world Communist movement through aiding, abetting, advising or teaching activities intended to overthrow, destroy, or to assist in the overthrow or destruction of the Constitutional form of the government of the State of Louisiana or of any political subdivision thereof by revolution, force, violence or other unlawful means. Southern Conference Educational Fund, Inc. is seeking by un-Constitutional means to overthrow or destroy the government of the State of Louisiana or any political subdivision thereof and to establish in place thereof a form of government not responsive to the people of the State of Louisiana under the Constitution of the State of Louisiana.

3. The allegations of Paragraph 3. of the complaint have no application to respondent Jim Garrison and respondent is not required to answer thereto.

4. The allegations of Paragraph 4. of the complaint have no application to respondent Jim Garrison and respondent is not required to answer thereto.

5. The allegations of Paragraph 5. of the complaint have no application to respondent Jim Garrison and respondent is not required to answer thereto.

6. The allegations of Paragraph 6. of the complaint have no application to respondent Jim Garrison and respondent is not required to answer thereto.

7. The allegations of Paragraph 7. of the complaint have no application to respondent Jim Garrison and respondent is not required to answer thereto.

8. Respondent Jim Garrison admits that he is District Attorney for the Parish of Orleans and that he is a citizen of the State of Louisiana.

[fol. 17] *Jurisdiction of the Court*

9. Denied. And further answering your respondent avers that any prosecution leveled against the plaintiffs herein is done so solely for the purpose of enforcing Louisiana Revised Statutes 14:358 through and including 390.8. Any-intended prosecutions by the State of Louisiana have as their sole purpose the enforcement of the foregoing statutes and are in no way attempts to deny Constitutionally protected rights guaranteed white and negro citizens alike. Therefore, jurisdiction founded upon statutes designed for the prosecution of civil rights against encroachment on racial grounds is denied.

10. Denied. Respondent calls for strict proof.

The Cause of Action

11. Denied. Your respondent denies knowledge of any plan or conspiracy or his involvement in any plan or con-

spiracy intended to deny plaintiffs' rights, privileges and immunities under the Constitution of the United States.

12. Your respondent denies knowledge of or involvement in any plan or conspiracy whereby plaintiffs are to be denied Constitutional rights through prosecution under color and authority of Louisiana Revised Statutes 14:358 through and including 390.8. Any actions of your respondent herein are those taken as a representative of the public of Orleans Parish and as chief prosecuting officer of the Parish of Orleans charged with responsibility for the enforcement of provisions of the Louisiana Criminal Code.

13. Your respondent denies knowledge of or involvement in any plan or conspiracy to deny defendants herein Constitutionally protected rights. Your respondent denies any involvement in the activities of Pfister and Willie and denies his involvement in any of the activities described in Paragraph 13. of plaintiffs' complaint.

[fol. 18]. 14. Respondent denies any involvement in the activities described in Paragraph 14. of plaintiffs' complaint. Respondent Jim Garrison denies having been called upon to prosecute officers of the Southern Conference Educational Fund, Inc. including plaintiff Dombrowski. Respondent Jim Garrison has received copies of documents legally seized from plaintiffs herein as well as certain original documents. Respondent avers that copies of this material or the originals thereof will be made available to plaintiffs herein on proper request.

15. Denied. Respondent calls for strict proof.

16. Denied. And further answering respondent avers that by statutes of the Congress of the United States and by interpretation of those statutes by the Courts of the United States, the States have not been excluded from exercising their fundamental right of self preservation by prosecuting subversives.

17. Denied.

18. Denied. And further answering respondent avers that in seeking to prosecute plaintiffs herein he has no

other objective than the enforcement of provisions of Louisiana Revised Statutes 14:35⁸ through and including 390.8. Your respondent specifically denies any efforts on his part to deny persons fundamental rights guaranteed by the Constitution of the United States.

19. Denied.

20. Denied.

Wherefore, respondent prays that:

1. Plaintiffs' complaint be dismissed with prejudice. Plaintiffs to pay all costs.

2. The temporary restraining order signed by the Honorable John Minor Wisdom on the 18th day of November, 1963 be dissolved and vacated.

[fol. 19] 3. That any and all injunctive relief prayed for by plaintiffs herein be denied.

4. That a declaratory judgment issue declaring Louisiana Revised Statutes 14:358 through and including 390.8, Constitutional under the provisions of the Constitution of the United States of America.

5. And for all general and equitable relief.

Jim Garrison, individually and as District Attorney in and for the Parish of Orleans, District Attorney's Office, 2700 Tulane Avenue, New Orleans, Louisiana, and William A. Porteous, III, Assistant District Attorney, District Attorney's Office, 2700 Tulane Avenue, New Orleans, Louisiana, by William A. Porteous, III.

[fol. 20] Affidavit of Service (omitted in printing).

[fol. 21]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

Civil Action No. 14,019

Division "B"

[Title omitted]

MOTION TO DISMISS—Filed December 9, 1963

Now into Court come defendants, Jimmie H. Davis, Governor of the State of Louisiana, Jack P. F. Gremillion, Attorney General of the State of Louisiana, Thomas D. Burbank, Commanding Officer of the Division of Louisiana State Police and Russell R. Willie, Major in the Louisiana State Police Department, individually and in their official capacities, through undersigned counsel, who move that this proceeding be dismissed upon the following grounds:

1.

The complaint fails to state a claim upon which relief can be granted.

2.

This Honorable Court is without jurisdiction in this matter.

Respectfully,

Jack P. F. Gremillion, Attorney General for the
State of Louisiana; M. E. Culligan, Assistant At-
torney General; John E. Jackson, Jr., Assistant
Attorney General.

[fol. 22]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 14019

Division B

[Title omitted]

PETITION OF INTERVENTION AND COMPLAINT—
Filed December 9, 1963

The petition of intervention and complaint of Benjamin E. Smith and Bruce C. Waltzer, plaintiffs in intervention for their verified petition allege that:

I.

Benjamin E. Smith and Bruce C. Waltzer are both citizens of the State of Louisiana and the United States of America and are attorneys at law admitted to practice before the State and Federal bars;

II.

That plaintiffs in intervention, Benjamin E. Smith and Bruce C. Waltzer, were both illegally arrested on the same date as plaintiff, James A. Dombrowski and under color of warrants of arrest similarly drawn as to those affecting James A. Dombrowski;

III.

That records and confidential legal files belonging to plaintiffs in intervention, Benjamin E. Smith and Bruce C. [fol. 23] Waltzer, were illegally seized under color of search warrants similarly drawn as to those affecting James A. Dombrowski and Southern Conference Educational Fund, Inc.;

IV.

That plaintiffs in intervention, Benjamin E. Smith and Bruce C. Waltzer are also under threat of imminent prosecution and harassment by Legislative bodies under color of authority granted in Louisiana Revised Statutes 14:358 et seq. and 14:390 et seq., and are further under imminent danger of having action taken by the duly constituted Grand Jury for the Parish of Orleans.

Petitioners are plaintiffs in intervention and show that after their illegal arrest they applied to the Criminal District Court for the Parish of Orleans for a preliminary hearing pursuant to State law under proceedings entitled Benjamin E. Smith, et al. versus State of Louisiana, et al., No. 181-975, Section "E"; that said hearing was held upon their application and the Judge of the said Court discharged plaintiffs in intervention for the reason that no legal evidence was adduced sufficient to bind them over and further no legal evidence was adduced sufficient to justify the issuance of the warrants of arrest previously mentioned herein;

That James A. Dombrowski filed a similar pleading in the State court which was consolidated for hearing with the pleadings filed by Benjamin E. Smith and Bruce C. Waltzer and James A. Dombrowski was similarly discharged.

Plaintiff in intervention, Benjamin E. Smith serves as Treasurer of Southern Conference Educational Fund, Inc., while James A. Dombrowski serves as its Executive Director. Plaintiff in intervention, Bruce C. Waltzer is a friend and supporter of Southern Conference Educational [fol. 24] Fund, Inc., and has appeared as such at some of its public functions.

Plaintiffs in intervention, Benjamin E. Smith and Bruce C. Waltzer as attorneys at law have represented and counselled the legal interest of Southern Conference Educational Fund, Inc.

For their verified complaint, plaintiffs in intervention, Benjamin E. Smith and Bruce C. Waltzer allege:

I.

That they adopt all of the allegations contained in the petition entitled James A. Dombrowski & Southern Conference Educational Fund, Inc., versus James H. Pfister, Russell R. Willie, Jimmie H. Davis, Jack P. F. Gremillion, Colonel Thomas D. Burbank, Jim Garrison;

II.

Further, that they are informed and believe that various documents and confidential legal files seized from them have been subpoenaed by the Grand Jury for the Parish of Orleans and that the said Grand Jury could meet momentarily for purposes of returning either indictments or No True Bills under 14:358 et seq. and 14:390 et seq., which statutes plaintiffs in intervention, Benjamin E. Smith and Bruce C. Waltzer reiterate are unconstitutional on their face;

III.

That plaintiffs in intervention, Benjamin E. Smith and Bruce C. Waltzer are informed and believe that the Honorable Malcolm V. O'Hara, Judge of the Criminal District Court, presently in charge of the Orleans Parish Grand Jury has pursuant to the said aforementioned statutes, which plaintiffs reiterate are unconstitutional, instructed the Grand Jury for the Parish of Orleans to investigate whether there are or have been any violations under the said statutes;

[fol. 25]

IV.

Plaintiffs in intervention Benjamin E. Smith and Bruce C. Waltzer aver that it is necessary not only that they be permitted to intervene in this said suit, but that they be permitted to join as parties defendant the Foreman and individual members of the Orleans Parish Grand Jury, namely: Messrs. Harry Plant, Foreman, John Leslie Bonnett, John Donelson Eagan, Andrew F. Gonczy, Jr., Rufus Louis Matthews, John Thomas McNamara, George Josiah Marsh, Joseph Hillary Morvant, Lloyd H. Pierre, James

Craig Roth, Robert Mallard Seago, Sr. and Edward Alvis Hodge, and the Honorable Malcolm V. O'Hara, Judge of the Criminal District Court, who is presently in charge of the Orleans Parish Grand Jury.

Wherefore, plaintiffs in intervention pray for the following relief:

1. That they be permitted to file this petition for intervention and complaint and thus join as parties plaintiffs herein;

2. That the Foreman of the Orleans Parish Grand Jury, Mr. Harry Plant, and individual members, namely: Messrs. John Leslie Bonnet, John Donelson Eagan, Andrew F. Goncz, Jr., Rufus Louis Matthews, John Thomas McNamara, George Josiah Marsh, Joseph Hillary Morvant, Lloyd H. Pierre, James Craig Roth, Robert Mallard Seago, Sr. and Edward Alvis Hodge, and the Honorable Malcolm V. O'Hara, Judge, be made parties defendant herein;

3. That a permanent injunction issue:

(a) Restraining the defendants, including those sought to be joined, their agents and attorneys from the enforcement, operation or execution of Louisiana Revised Statutes R.S. 14:358 and R.S. 14:390, including those individual members of the Grand Jury, namely, John Leslie Bonnet, John Donelson Eagan, Andrew F. Goncz, Jr., Rufus Louis Matthews, John Thomas McNamara, George Josiah Marsh, [fol. 26] Joseph Hillary Morvant, Lloyd H. Pierre, James Craig Roth, Robert Mallard Seago, Sr. and Edward Alvis Hodge, and the Foreman, Harry Plant, of the Orleans Parish Grand Jury and the Honorable Malcolm V. O'Hara, Judge.

(b) Restraining the defendants, and those sought to be joined, their agents, and attorneys from impeding, intimidating, hindering and preventing the plaintiffs or members, friends and supporters of plaintiff corporation from exercising the rights, privileges and immunities guaranteed to them by the Constitution and laws of the United States.

4. That a Declaratory Judgment issue declaring that Louisiana Revised Statutes 14:390 through 14:390.5, and Louisiana Revised Statutes 14:358 through 14:388 are void on their face, null and void as violative of the Constitution of the United States.

5. That pending the hearing and determination of the prayers for permanent relief an interlocutory injunction issue restraining the defendants and those sought to be joined, their agents, attorneys and all others acting in concert with them from enforcing in any way the provisions of Louisiana Revised Statutes 14:358 through 14:388 and Louisiana Revised Statutes 14:390 through 14:390.5 or for instituting or undertaking any proceedings whatsoever pursuant to said statutes against the plaintiffs herein.

Plaintiffs respectfully pray that the above relief be granted.

Hubert, Baldwin & Zibilich, 300 Oil & Gas Building,
1100 Tulane Avenue, New Orleans, Louisiana, Ja
5-2156, By: Robert Zibilich.

[fol. 27] *Duly sworn to by Benjamin E. Smith and Bruce C. Waltzer, jurats omitted in printing.*

[fol. 28]

ORDER

Considering the verified petition herein, it is ordered by the Court that Benjamin E. Smith and Bruce C. Waltzer be and they are hereby permitted to file this their petition for intervention and complaint and that they be and are hereby joined as parties plaintiffs herein.

It is further ordered by the Court that the Foreman of the Orleans Parish Grand Jury, Harry Plant, and the individual members, namely: John Leslie Bonnett, John Donelson Eagan, Andrew F. Goncezi, Jr., Rufus Louis Matthews, John Thomas McNamara, George Josiah Marsh, Joseph Hillary Morvant, Lloyd H. Pierre, James Craig Roth, Robert Mallard Seago, Sr. and Edward Alvis Hodge,

and the Honorable Malcolm V. O'Hara, Judge, be and they are hereby made parties defendants herein.

New Orleans, Louisiana.

This day of, 1963.

.....
Judge

[fol. 29]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
Civil Action No. 14019
Division "B"

JAMES A. DOMBROWSKI, etc., Plaintiffs,
against

JAMES H. PFISTER, etc., Defendants.

OFFER OF PROOF—January 10, 1964

Plaintiffs and intervenors offer to prove that if evidence were admitted by affidavit and/or oral testimony upon the motion for interlocutory injunction, the following facts would be proved thereby:

1.

The sole and exclusive purpose of the Southern Conference Educational Fund, Inc. is the elimination of segregation and all forms of discrimination based on race in the South through education and other non-violent methods.

2.

The sole and exclusive interest of plaintiff, Dr. James A. Dombrowski, a doctor of philosophy in theology, in political action is identical to that of S.C.E.F. of which he is and for many years has been Executive Director.

3.

Benjamin Smith, intervenor, is Treasurer of the S.C.E.F. He is and has been active in advocating elimination of segregation in the South by non-violent and constitutional means. In addition, he is a practicing attorney and has been actively engaged in Civil Rights litigation and has participated in various legal proceedings seeking the elimination of segregation in its various phases in the New Orleans Area.

[fol. 30]

4.

Bruce Waltzer is the law partner of Benjamin Smith and has likewise participated in advocacy of elimination of segregation by non-violent and constitutional means and has participated in litigation seeking the termination of segregation in its various aspects in the New Orleans Area. In addition, he is not, and never has been an officer of S.C.E.F.

5.

S.C.E.F. is not and never has been a subversive organization; does not and has never advocated the overthrow of the Government of Louisiana or of the United States.

6.

Neither James A. Dombrowski nor Benjamin Smith nor Bruce Waltzer are, nor have they ever been, communists or communist controlled or under the discipline of the communist party.

7.

Neither Dombrowski, Smith nor Waltzer are, nor have they ever been, subversive and do not and have never ad-

vocated the overthrow of the government of the State of Louisiana or of the United States.

8.

There is no reasonable justification for inferring anything contrary to the above facts, which facts become self-evident upon investigation of the activities of any of the parties herein, and that these facts are, in truth and in fact, well known to the defendants in this case.

9.

On October 5, 1963, defendants and others acting with them staged a raid upon the place of business of Southern Conference Educational Fund, Inc. at 822 Perdido Street in the City of New Orleans, and upon the private homes of [fol. 31] Dombrowski, Smith and Waltzer, and further searched the private automobiles of Dombrowski, Smith and Waltzer, and in addition raided the law offices of Smith and Waltzer and confiscated therefrom certain legal files.

10.

The said raids were accomplished pursuant to warrants signed on October 2, 1963, purporting to authorize the arrest of the parties and the search of the premises described therein.

11.

The said warrants were issued as a result of affidavits alleging violations of R.S. 14:358 et seq. and 14:390 et seq. and were executed by persons working in concert with defendants. These affidavits contained misrepresentation of material facts, and further contained many and significant omissions of fact, which misrepresentations and omissions were for the purpose of procuring warrants to which defendants would not otherwise have been entitled.

12.

The warrants themselves are invalid on their faces as are the affidavits upon which they were issued.

13.

Tremendous quantities of materials were seized which were not described in the warrants; tremendous quantities of materials were seized which could have no possible bearing upon any legitimate purpose of defendants, and could only have been seized as a result of an intent to harass and intimidate plaintiffs and intervenors and to destroy the effectiveness of their work. Included among such materials are approximately \$100 in postage stamps; approximately 1500 to 2000 books and pamphlets, including many books [fol. 32] from Dombrowski's personal library on literature, philosophy, religion and sociology, etc.; Dombrowski's personal check book; pictures from the office wall of S.C.E.F. including a photograph inscribed by Mrs. Eleanor Roosevelt; and the complete inventory of thousands of pamphlets, brochures and other literature concerning integration; several thousand blank receipts, numbered forms and blank stationery and letterheads.

14.

Defendants also seized the entire mailing list of S.C.E.F. consisting of approximately eight to ten thousand names of contributors and friends of S.C.E.F.

15.

The purpose of the raids, which was to effectively destroy the work of plaintiffs and intervenors in the field of Civil Rights, is evidenced, in addition to the complete lack of any evidence of communism or subversion on the part of the parties herein, by statements made at and about the time of the raids by defendants and their authorized attorneys and representatives, which statements were widely reported in the public press, radio and television to the effect that plaintiffs and intervenors were "engaged in racial agitation" and that the work of defendants could not be coordinated with the FBI even though they had confidence in the FBI, for the reason contained in the following public statement of defendants: "We knew that if we told the FBI about this raid, they would have to tell Bobby

Kennedy. We cannot trust him and we expect him to tell his friend, Martin Luther King."

The purpose is further evidenced by the release by defendants of certain documents containing the identity of a prominent contributor to S.C.E.F. to The Councilor, a segregationist newspaper, which information was publicized in its issue of November, 1963.

[fol. 33]

16.

Examination of the documents seized reveals conclusively that plaintiffs and intervenors are engaged in no illegal activities. The evidence seized affirmatively shows that the parties are engaged in legitimate Civil Rights activities and that no documents contained any evidence whatsoever of communism or communist activity or subversion or advocacy of the overthrow of the State or Federal Government.

17.

On October 25, 1963, on motion of Dombrowski, Smith and Waltzer, a preliminary hearing was held in Section "E" of the Criminal District Court for the Parish of Orleans for the purpose of inquiring into the validity of the arrests of movers. After hearing evidence, the Court summarily vacated the warrants of arrest, holding them to be invalid, and ordered the discharge of Dombrowski, Smith and Waltzer.

18.

Despite the lack of evidence, defendants have stated their intention of criminally charging and/or obtaining grand jury indictments of Dombrowski, Smith and Waltzer, for violation of R.S. 14:358 et seq. and 14:390 et seq. This intention has been expressed in a resolution of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, and via the public press, radio and television, by other of defendants and their attorneys. Representatives of defendant Jim Garrison have expressed their intention of presenting evidence to the Grand Jury.

19.

Indictment of Dombrowski, Smith and Waltzer could, and is calculated to curtail the Civil Rights activities of the said individuals and of the S.C.E.F. as effectively as could actual conviction upon presentment of proper evidence. [fol. 34] This is true in that charges and indictments of officers and members of Civil Rights organizations for alleged communist or subversive activity deter many from participation in or contribution to them, both by those who believe such charges to be true, and by those who know them to be false, the latter as a result of their fear of public embarrassment by popular disapproval of their association with a group so charged. The fund-raising ability of S.C.E.F. would be greatly hampered as would the number of active participants in its programs.

20.

The law practice of Smith and Waltzer, including their ability to handle Civil Rights cases, could be and has been seriously affected adversely as the result of criminal charges or indictment alleging communist or subversive activity, the complete falsity of such charges being of little consequence.

21.

Practically all groups, organizations and associations of any significance or consequence, active in the field of Civil Rights, have at some time in the past been identified or cited, albeit on insufficient evidence and unwarranted conclusions, as communist or communist front or communist dominated organizations, and would consequently fall within the purview of R.S. 14:358 and 14:390.

22.

The presumption set forth in R.S. 14:359 (3) is unreasonable in that the reports of committees and subcommittees have been made on the basis of incomplete and untrustworthy evidence not subject to confrontation or cross-

[fol. 35] examination and in that they contain unjustified inferences and conclusions.

23.

Compliance with the statute, particularly the registration requirements thereof, is impossible in that there exists no readily ascertainable compilation of all organizations that have been cited or identified as communist front or communist dominated organizations, and ascertainment of the identity of all such organizations is virtually impossible.

24.

The origin of the statute above numbered and the setting in which they operate indicate their discriminatory purpose and application to Civil Rights organizations.

Plaintiffs and intervenors further offer to introduce the testimony of the following witnesses who will testify substantially in the manner as set forth on the affidavits which are attached hereto and made part hereof:

Dr. James A. Dombrowski	Rev. Fred L. Shuttlesworth
Benjamin Smith	Rev. C. T. Vivian
Bruce Waltzer	Bishop Edgar A. Love
Dr. Martin Luther King, Jr.	Dr. Herman H. Long

Plaintiffs further offer to prove each and every factual allegation contained in the complaints herein.

Kunstler, Kunstler & Kinoy, By Arthur Kinoy,
Milton E. Breher, A. P. Tureaud, Jr., Attorneys
for Plaintiffs.

Hubert, Baldwin & Zibilich, By Robert Zibilich, At
torneys for Intervenors.

[fol. 36]

ATTACHMENT TO OFFER OF PROOF

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
Civil Action No. 14019 B

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et als.

AFFIDAVIT

State of Georgia
County of Fulton

Before Me, the undersigned authority, duly qualified and commissioned in and for the State and County aforesaid,

Martin Luther King, Jr., who after being first duly sworn, did depose and say:

That he is President of the Southern Christian Leadership Conference and Co-Pastor of Ebenezer Baptist Church in Atlanta, Georgia; that he was one of the founders of Montgomery Improvement Association and for the past several years has been a leader of this movement; that he has authored several books on the subject of Civil Rights and has devoted his entire adult life to the cause of Civil Rights as he considers the same to be an expression of Christian Gospel;

That he has known Dr. James A. Dombrowski and has been well acquainted with him for the past eight years;

Personally Came and Appeared:

[fol. 37] That the function of the Southern Conference Education Fund, Inc. is to eliminate segregation and all

forms of discrimination based on race in the South through education and other non-violent methods. Other than that, S. C. E. F. urges no political philosophy and takes no political action. S. C. E. F. has never, to my knowledge, urged the election or defeat of any candidate for public office or advocated the passage or defeat of any legislation, other than in the field of civil rights, or advocated or opposed any political program except the elimination of segregation based on race. The major purpose of S. C. E. F. has been similar to that of the Church advocacy of the Hebraic Christian ethical tradition.

That more specifically the S. C. E. F. attempts to effectuate its purpose by sponsoring integrated conferences bringing together Southerners of similar purpose to exchange information on how to end segregation and discrimination. Such conferences have been held almost every year since 1938. S. C. E. F. publishes a monthly journal, *The Southern Patriot*, which reports activities and aspirations of people and organizations working for integration, and this publication has been published continuously since 1942. S. C. E. F. engages in the printing and distribution of brochures, pamphlets and reports on the various aspects of segregated living with suggestions for action to eliminate it. Another activity of S. C. E. F. is the stimulation of local and state groups designed to combat segregation by direct action or political action, or both. It operates a news service which provides information on integrationist activities to numerous publications throughout the nation. [fol. 38] It provides funds for test cases to establish rights of minorities. It engages in campaigns to inform people of their rights of free speech, assembly and petition under the First Amendment to the U. S. Constitution.

That affiant knows Dr. James A. Dombrowski to have made many and significant contributions to the activities of S. C. E. F. and to the fight against segregation in general. To the best of my knowledge, his entire activity is and has been the advocacy of Civil Rights as an implementation of the Hebraic Christian tradition of brotherhood.

That the chief weapon of S. C. E. F., like other organizations whose aim is to combat racial segregation, is the use

of the press and speech as means of mass communication for dissemination of ideas, including the printing and distribution of literature and TV and radio appeals. The effectiveness of such organizations generally, and of S. C. E. F. in particular, requires the active participation of thousands of like persons of good standing in their communities throughout the country, particularly in the South, as well as the financial contributions of thousands of other persons who do not participate actively in the programs of the organization.

That it is known to me to be a fact based upon my experience in the field of Civil Rights throughout my adult life, that there is a general reluctance on the part of a very large portion of the contributors and active participants of both races to be identified with Civil Rights movements because of the fear of being called communist or subversive, or fear of being linked with a group labeled communist or subversive regardless of the stature or lack of stature, or responsibility or lack of responsibility of the person, group, agency, official or legislative committee making such accusation. The fear of such possible accusations, regardless of their lack of basis in fact, effectively deters many who would otherwise be disposed to participate.

That a large portion of the contributors to Civil Rights organizations in general and to S. C. E. F. in particular, particularly in the South, do not want and do not intend that their names should be used or utilized in any manner. They expect the fact of their contribution or association with the organization to remain confidential. That the reason for this is the unpopularity of the cause espoused by such organization in the communities in which they reside. They fear general ill will and possible economic reprisals. The fear of publicity attending the fact of their contribution or association deters many who would otherwise be disposed to contribute or otherwise associate themselves with Civil Rights organizations such as Southern Conference Educational Fund, Inc.

That police action against Civil Rights organizations such as Southern Conference Educational Fund, including

raids and arrests of officers and officials, seizure of books, records and other documents, particularly lists of contributors, friends and members, investigations of such organizations and indictments or other criminal charges against officers and members, whether or not they result in conviction or even in trial, can effectively stymie the operation of the organization. They are well calculated to destroy the effectiveness of organizations such as Southern Conference Educational Fund in that, in addition to the tremendous expense involved to the organization, such raids, arrests, searches and seizures and investigations, [fol. 40] and particularly charges and indictments, greatly deter contributors and active participants, and that consequently, fund raising ability is seriously hampered and activity seriously lessened. The said raids, arrests, searches and seizures, and most particularly charges and indictments of officers and members for alleged communist or subversive activity deter many from participation or contribution, both by those who believe such charges to be true and by those who know them to be false, the latter as a result of their fear of public embarrassment by popular disapproval of their association with a group so charged; that consequently the work of such a Civil Rights organization as S. C. E. F. is practically as effectively hampered and stymied by charges and indictments as it would be by conviction of its officers or members.

Martin L. King, Jr.

Sworn to and subscribed before me this 5 day of December, 1963.

Lillian D. Watkins, Notary Public. My commission expires Feb. 20, 1967.

[fol. 41]

ATTACHMENT TO OFFER OF PROOF

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

Civil Action No. 14019 B

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et als.

AFFIDAVIT

State of Alabama
County of Jefferson

Before Me, the undersigned authority, duly qualified and commissioned in and for the State and County aforesaid,

Personally Came and Appeared:

Fred L. Shuttlesworth, who, after being first duly sworn, did depose and say:

That he is the President of the Southern Conference Educational Fund, Inc. and has held this office since April, 1963; that he is Secretary of the Southern Christian Leadership Conference; that he is President of the Alabama Christian Movement for Human Rights, and that he is a founder of that organization;

That he is an Officer of the National Baptist Convention and Pastor of Baptist Churches in Birmingham for many years; that he is now Pastor of Revelation Baptist Church in Cincinnati; that he has been an active leader of the Civil Rights Movement in Birmingham and a member of many boards and commissions appointed by the President in connection with civil rights;

That he has been associated with S.C.E.F. as an officer or Board Member for approximately ten years and that he is a friend and has been well acquainted with Dr. James A. Dombrowski during this ten year period;

[fol. 42] That the function of the Southern Conference Education Fund, Inc. is to eliminate segregation and all forms of discrimination based on race in the South through education and other non-violent methods. Other than that, S. C. E. F. urges no political philosophy and takes no political action. S. C. E. F. has never, to my knowledge, urged the election or defeat of any candidate for public office or advocated the passage or defeat of any legislation, other than in the field of civil rights, or advocated or opposed any political program except the elimination of segregation based on race. The major purpose of S. C. E. F. has been similar to that of the Church advocacy of the Hebraic Christian ethical tradition.

That more specifically the S. C. E. F. attempts to effectuate its purpose by sponsoring integrated conferences bringing together Southerners of similar purpose to exchange information on how to end segregation and discrimination. Such conferences have been held almost every year since 1938. S. C. E. F. publishes a monthly journal, The Southern Patriot, which reports activities and aspirations of people and organizations working for integration, and this publication has been published continuously since 1942. S. C. E. F. engages in the printing and distribution of brochures, pamphlets and reports on the various aspects of segregated living with suggestions for action to eliminate it. Another activity of S. C. E. F. is the stimulation of local and state groups designed to combat segregation by direct action or political action, or both. It operates a news service which provides information on integrationist activities to numerous publications throughout the nation. [fol. 43] It provides funds for test cases to establish rights of minorities. It engages in campaigns to inform people of their rights of free speech, assembly and petition under the First Amendment to the U. S. Constitution.

That affiant knows Dr. James A. Dombrowski to have made many and significant contributions to the activities of S. C. E. F. and to the fight against segregation in general. To the best of my knowledge, his entire activity is and has been the advocacy of Civil Rights as an implementation of the Hebraic Christian tradition of brotherhood.

That the chief weapon of S. C. E. F., like other organizations whose aim is to combat racial segregation, is the use of the press and speech as means of mass communication for dissemination of ideas, including the printing and distribution of literature and TV and radio appeals. The effectiveness of such organizations generally, and of S. C. E. F. in particular, requires the active participation of thousands of like persons of good standing in their communities throughout the country, particularly in the South, as well as the financial contributions of thousands of other persons who do not participate actively in the programs of the organization.

That it is known to me to be a fact based upon my experience in the field of Civil Rights throughout my adult life, that there is a general reluctance on the part of a very large portion of the contributors and active participants of both races to be identified with Civil Rights movements because of the fear of being called communist or subversive, or fear of being linked with a group labeled communist or subversive regardless of the stature or lack of stature, or responsibility or lack of responsibility of the person, group, agency, official or legislative committee making such accusation. The fear of such possible accusations, regardless of their lack of basis in fact, effectively deters many who would otherwise be disposed to participate.

That a large portion of the contributors to Civil Rights organizations in general and to S. C. E. F. in particular, particularly in the South, do not want and do not intend that their names should be used or utilized in any manner. They expect the fact of their contribution or association with the organization to remain confidential. That the reason for this is the unpopularity of the cause espoused by such organization in the communities in which they reside. They fear general ill will and possible economic reprisals. The fear of publicity attending the fact of their contribution or association deters many who would otherwise be disposed to contribute or otherwise associate themselves with Civil Rights organizations such as Southern Conference Educational Fund, Inc.

That police action against Civil Rights organizations such as Southern Conference Educational Fund, including raids and arrests of officers and officials, seizure of books, records and other documents, particularly lists of contributors, friends and members, investigations of such organizations and indictments or other criminal charges against officers and members, whether or not they result in conviction or even in trial, can effectively stymie the operation of the organization. They are well calculated to destroy the effectiveness of organizations such as Southern Conference Educational Fund in that, in addition to the tremendous expense involved to the organization, such raids, arrests, searches and seizures and investigations, [fol. 45] and particularly charges and indictments, greatly deter contributors and active participants, and that consequently, fund raising ability is seriously hampered and activity seriously lessened. The said raids, arrests, searches and seizures, and most particularly charges and indictments of officers and members for alleged communist or subversive activity deter many from participation or contribution, both by those who believe such charges to be true and by those who know them to be false, the latter as a result of their fear of public embarrassment by popular disapproval of their association with a group so charged; that consequently the work of such a Civil Rights organization as S. C. E. F. is practically as effectively hampered and stymied by charges and indictments as it would be by conviction of its officers or members.

Rev. Fred L. Shuttlesworth.

Sworn to and subscribed before me this 5th day of December, 1963.

Jacqueline J. Wallace, Notary Public. My commission expires March 10, 1964.

[fol. 46]

ATTACHMENT TO OFFER OF PROOF

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

Civil Action No. 14019 B

 JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PEISTER, et als.

 AFFIDAVIT

State of Alabama
County of Jefferson

Before Me, the undersigned authority, duly qualified and commissioned in and for the State and County aforesaid,

Personally Came and Appeared:

The Reverend C. T. Vivian who, after being first duly sworn, did depose and say:

That he is a Baptist minister and has officiated in churches in Nashville and Chattanooga;

That he is now Director of Affiliates of the Southern Christian Leadership Conference; that he has been a member of the Board of Directors of Southern Conference Educational Fund, Inc. for approximately one year and has been intimately associated with the policy making functions of S. C. E. F.; that he has known Dr. James A. Dombrowski for approximately three years;

[fol. 47] That the function of the Southern Conference Education Fund, Inc. is to eliminate segregation and all forms of discrimination based on race in the South through

education and other non-violent methods. Other than that, S. C. E. F. urges no political philosophy and takes no political action. S. C. E. F. has never, to my knowledge, urged the election or defeat of any candidate for public office or advocated the passage or defeat of any legislation, other than in the field of civil rights, or advocated or opposed any political program except the elimination of segregation based on race. The major purpose of S. C. E. F. has been similar to that of the Church advocacy of the Hebraic Christian ethical tradition.

That more specifically the S. C. E. F. attempts to effectuate its purpose by sponsoring integrated conferences bringing together Southerners of similar purpose to exchange information on how to end segregation and discrimination. Such conferences have been held almost every year since 1938. S. C. E. F. publishes a monthly journal, *The Southern Patriot*, which reports activities and aspirations of people and organizations working for integration, and this publication has been published continuously since 1942. S. C. E. F. engages in the printing and distribution of brochures, pamphlets and reports on the various aspects of segregated living with suggestions for action to eliminate it. Another activity of S. C. E. F. is the stimulation of local and state groups designed to combat segregation by direct action or political action, or both. It operates a news service which provides information on integrationist activities to numerous publications throughout the nation. [fol. 48] It provides funds for test cases to establish rights of minorities. It engages in campaigns to inform people of their rights of free speech, assembly and petition under the First Amendment to the U. S. Constitution.

That affiant knows Dr. James A. Dombrowski to have made many and significant contributions to the activities of S. C. E. F. and to the fight against segregation in general. To the best of my knowledge, his entire activity is and has been the advocacy of Civil Rights as an implementation of the Hebraic Christian tradition of brotherhood.

That the chief weapon of S. C. E. F., like other organizations whose aim is to combat racial segregation, is the use of the press and speech as means of mass communication.

for dissemination of ideas, including the printing and distribution of literature and TV and radio appeals. The effectiveness of such organizations generally, and of S. C. E. F. in particular, requires the active participation of thousands of like persons of good standing in their communities throughout the country, particularly in the South, as well as the financial contributions of thousands of other persons who do not participate actively in the programs of the organization.

That it is known to me to be a fact based upon my experience in the field of Civil Rights throughout my adult life, that there is a general reluctance on the part of a very large portion of the contributors and active participants of both races to be identified with Civil Rights movements because of the fear of being called communist or subversive, or fear of being linked with a group labeled communist or subversive regardless of the stature or lack of stature, or responsibility or lack of responsibility of the person, group, agency, official or legislative committee making such accusation. The fear of such possible accusations, regardless of their lack of basis in fact, effectively deters many who would otherwise be disposed to participate.

That a large portion of the contributors to Civil Rights organizations in general and to S. C. E. F. in particular, particularly in the South, do not want and do not intend that their names should be used or utilized in any manner. They expect the fact of their contribution or association with the organization to remain confidential. That the reason for this is the unpopularity of the cause espoused by such organization in the communities in which they reside. They fear general ill will and possible economic reprisals. The fear of publicity attending the fact of their contribution or association deters many who would otherwise be disposed to contribute or otherwise associate themselves with Civil Rights organizations such as Southern Conference Educational Fund, Inc.

That police action against Civil Rights organizations such as Southern Conference Educational Fund, including raids and arrests of officers and officials, seizure of books,

records and other documents, particularly lists of contributors, friends and members, investigations of such organizations and indictments or other criminal charges against officers and members, whether or not they result in conviction or even in trial, can effectively stymie the operation of the organization. They are well calculated to destroy the effectiveness of organizations such as Southern Conference Educational Fund in that, in addition to the tremendous expense involved to the organization, such raids, arrests, searches and seizures and investigations, [fol. 50] and particularly charges and indictments, greatly deter contributors and active participants, and that consequently, fund raising ability is seriously hampered and activity seriously lessened. The said raids, arrests, searches and seizures, and most particularly charges and indictments of officers and members for alleged communist or subversive activity deter many from participation or contribution, both by those who believe such charges to be true and by those who know them to be false, the latter as a result of their fear of public embarrassment by popular disapproval of their association with a group so charged; that consequently the work of such a Civil Rights organization as S. C. E. F. is practically as effectively hampered and stymied by charges and indictments as it would be by conviction of its officers or members.

Rev. C. T. Vivian.

Sworn to and subscribed before me this 5th day of December, 1963.

Jacqueline J. Wallace, Notary Public. My commission expires March 10, 1964.

[fol. 51]

ATTACHMENT TO OFFER OF PROOF

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

Civil Action No. 14019 B

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et als.

AFFIDAVIT

State of Maryland
County of Baltimore

Before Me, the undersigned authority, duly qualified and
commissioned in and for the State and County aforesaid,

Personally Came and Appeared:

Bishop Edgar A. Love, who, after being first duly sworn,
did depose and say:

That he is Bishop of The Methodist Church in Baltimore
and that he is the immediate Past-President of the South-
ern Conference Educational Fund, Inc.; that he served as
President for approximately four years, and that prior to
that he was Vice-President of S. C. E. F., prior to which
he was a member of the Board of Directors; that he has
consequently been intimately associated with the policy
making functions of S. C. E. F. for many years;

That he has personally known Dr. James A. Dombrowski
and has been well acquainted with him for approximately
ten years;

[fol. 52] That the function of the Southern Conference
Education Fund, Inc. is to eliminate segregation and all

forms of discrimination based on race in the South through education and other non-violent methods. Other than that, S. C. E. F. urges no political philosophy and takes no political action. S. C. E. F. has never, to my knowledge, urged the election or defeat of any candidate for public office or advocated the passage or defeat of any legislation, other than in the field of civil rights, or advocated or opposed any political program except the elimination of segregation based on race. The major purpose of S. C. E. F. has been similar to that of the Church advocacy of the Hebraic Christian ethical tradition.

That more specifically the S. C. E. F. attempts to effectuate its purpose by sponsoring integrated conferences bringing together Southerners of similar purpose to exchange information on how to end segregation and discrimination. Such conferences have been held almost every year since 1938. S. C. E. F. publishes a monthly journal, *The Southern Patriot*, which reports activities and aspirations of people and organizations working for integration, and this publication has been published continuously since 1942. S. C. E. F. engages in the printing and distribution of brochures, pamphlets and reports on the various aspects of segregated living with suggestions for action to eliminate it. Another activity of S. C. E. F. is the stimulation of local and state groups designed to combat segregation by direct action or political action, or both. It operates a news service which provides information on integrationist activities to numerous publications throughout the nation. [fol. 53] It provides funds for test cases to establish rights of minorities. It engages in campaigns to inform people of their rights of free speech, assembly and petition under the First Amendment to the U. S. Constitution.

That affiant knows Dr. James A. Dombrowski to have made many and significant contributions to the activities of S. C. E. F. and to the fight against segregation in general. To the best of my knowledge, his entire activity is and has been the advocacy of Civil Rights as an implementation of the Hebraic Christian tradition of brotherhood.

That the chief weapon of S. C. E. F., like other organizations whose aim is to combat racial segregation, is the use

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of the press and speech as means of mass communication for dissemination of ideas, including the printing and distribution of literature and TV and radio appeals. The effectiveness of such organizations generally, and of S. C. E. F. in particular, requires the active participation of thousands of like persons of good standing in their communities throughout the country, particularly in the South, as well as the financial contributions of thousands of other persons who do not participate actively in the programs of the organization.

That it is known to me to be a fact based upon my experience in the field of Civil Rights throughout my adult life, that there is a general reluctance on the part of a very large portion of the contributors and active participants of both races to be identified with Civil Rights movements because of the fear of being called communist or subversive, or fear of being linked with a group labeled communist or subversive regardless of the stature or lack of stature, or responsibility or lack of responsibility of the person, group, agency, official or legislative committee making such accusation. The fear of such possible accusations, regardless of their lack of basis in fact, effectively deters many who would otherwise be disposed to participate.

That a large portion of the contributors to Civil Rights organizations in general and to S. C. E. F. in particular, particularly in the South, do not want and do not intend that their names should be used or utilized in any manner. They expect the fact of their contribution or association with the organization to remain confidential. That the reason for this is the unpopularity of the cause espoused by such organization in the communities in which they reside. They fear general ill-will and possible economic reprisals. The fear of publicity attending the fact of their contribution or association deters many who would otherwise be disposed to contribute or otherwise associate themselves with Civil Rights organizations such as Southern Conference Educational Fund, Inc.

That police action against Civil Rights organizations such as Southern Conference Educational Fund, including raids and arrests of officers and officials, seizure of books,

records and other documents, particularly lists of contributors, friends and members, investigations of such organizations and indictments or other criminal charges against officers and members, whether or not they result in conviction or even in trial, can effectively stymie the operation of the organization. They are well calculated to destroy the effectiveness of organizations such as Southern Conference Educational Fund in that, in addition to the tremendous expense involved to the organization, such raids, arrests, searches and seizures and investigations, [fol. 55] and particularly charges and indictments, greatly deter contributors and active participants, and that consequently, fund raising ability is seriously hampered and activity seriously lessened. The said raids, arrests, searches and seizures, and most particularly charges and indictments of officers and members for alleged communist, or subversive activity deter many from participation or contribution, both by those who believe such charges to be true and by those who know them to be false, the latter as a result of their fear of public embarrassment by popular disapproval of their association with a group so charged; that consequently the work of such a Civil Rights organization as S. C. E. F. is practically as effectively hampered and stymied by charges and indictments as it would be by conviction of its officers or members.

Edgar A. Love.

Sworn to and subscribed before me this 4th day of December, 1963.

D. Benton Grothaus, Jr., Notary Public. My commission expires May 3, 1965.

[fol. 56]

ATTACHMENT TO OFFER OF PROOF

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

Civil Action No. 14019 B

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et als.

AFFIDAVIT

State of

County of

Before Me, the undersigned authority, duly qualified and commissioned in and for the State and County aforesaid,

Personally Came and Appeared:

Dr. Herman H. Long who, after being first duly sworn, did depose and say:

That he is Director of Race Relations of the Board of Homeland Ministries of the United Church of Christ; that he is President-elect of Talledega College, Talledega, Alabama; that he is Past-President of the National Association of Interracial Officials.

That he is Vice-President of the Southern Conference Education Fund, Inc. and a member of the Board of Directors of S.C.E.F. since approximately 1946, and that he has actively participated in the work of S. C. E. F. since approximately 1942.

That he has been a close personal friend of Dr. James A. Dombrowski since 1942 and that he has worked closely with the said Dombrowski in the field of race relations since that time.

That he has been intimately associated with the policy making function of S.C.E.F. for many years.

[fol. 57] That the function of the Southern Conference Education Fund, Inc. is to eliminate segregation and all forms of discrimination based on race in the South through education and other non-violent methods. Other than that, S. C. E. F. urges no political philosophy and takes no political action. S. C. E. F. has never, to my knowledge, urged the election or defeat of any candidate for public office or advocated the passage or defeat of any legislation, other than in the field of civil rights, or advocated or opposed any political program except the elimination of segregation based on race. The major purpose of S. C. E. F. has been similar to that of the Church advocacy of the Hebraic Christian ethical tradition.

That more specifically the S. C. E. F. attempts to effectuate its purpose by sponsoring integrated conferences bringing together Southerners of similar purpose to exchange information on how to end segregation and discrimination. Such conferences have been held almost every year since 1938. S. C. E. F. publishes a monthly journal, The Southern Patriot, which reports activities and aspirations of people and organizations working for integration, and this publication has been published continuously since 1942. S. C. E. F. engages in the printing and distribution of brochures, pamphlets and reports on the various aspects of segregated living with suggestions for action to eliminate it. Another activity of S. C. E. F. is the stimulation of local and state groups designed to combat segregation by direct action or political action, or both. It operates a news service which provides information on integrationist activities to numerous publications throughout the nation. [fol. 58] It provides funds for test cases to establish rights of minorities. It engages in campaigns to inform people of their rights of free speech, assembly and petition under the First Amendment to the U. S. Constitution.

That affiant knows Dr. James A. Dombrowski to have made many and significant contributions to the activities of S. C. E. F. and to the fight against segregation in general. To the best of my knowledge, his entire activity is

and has been the advocacy of Civil Rights as an implementation of the Hebraic Christian tradition of brotherhood.

That the chief weapon of S. C. E. F., like other organizations whose aim is to combat racial segregation, is the use of the press and speech as means of mass communication for dissemination of ideas, including the printing and distribution of literature and TV and radio appeals. The effectiveness of such organizations generally, and of S. C. E. F. in particular, requires the active participation of thousands of like persons of good standing in their communities throughout the country, particularly in the South, as well as the financial contributions of thousands of other persons who do not participate actively in the programs of the organization.

That it is known to me to be a fact based upon my experience in the field of Civil Rights throughout my adult life, that there is a general reluctance on the part of a very large portion of the contributors and active participants of both races to be identified with Civil Rights movements because of the fear of being called communist or subversive, or fear of being linked with a group labeled communist or subversive regardless of the stature or lack of stature, or responsibility or lack of responsibility of the person, group, agency, official or legislative committee making such accusation. The fear of such possible accusations, regardless of their lack of basis in fact, effectively deters many who would otherwise be disposed to participate.

That a large portion of the contributors to Civil Rights organizations in general and to S. C. E. F. in particular, particularly in the South, do not want and do not intend that their names should be used or utilized in any manner. They expect the fact of their contribution or association with the organization to remain confidential. That the reason for this is the unpopularity of the cause espoused by such organization in the communities in which they reside. They fear general ill will and possible economic reprisals. The fear of publicity attending the fact of their contribution or association deters many who would otherwise be disposed to contribute or otherwise associate themselves with Civil Rights organizations such as Southern Conference Educational Fund, Inc.

That police action against Civil Rights organizations such as Southern Conference Educational Fund, including, raids and arrests of officers and officials, seizure of books, records and other documents, particularly lists of contributors, friends and members, investigations of such organizations and indictments or other criminal charges against officers and members, whether or not they result in conviction or even in trial, can effectively stymie the operation of the organization. They are well calculated to destroy the effectiveness of organizations such as Southern Conference Educational Fund in that, in addition to the tremendous expense involved to the organization, such raids, arrests, searches and seizures and investigations, [fol. 60] and particularly charges and indictments, greatly deter contributors and active participants, and that consequently, fund raising ability is seriously hampered and activity seriously lessened. The said raids, arrests, searches and seizures, and most particularly charges and indictments of officers and members for alleged communist or subversive activity deter many from participation or contribution, both by those who believe such charges to be true and by those who know them to be false, the latter as a result of their fear of public embarrassment by popular disapproval of their association with a group so charged; that consequently the work of such a Civil Rights organization as S. C. E. F. is practically as effectively hampered and stymied by charges and indictments as it would be by conviction of its officers or members.

Herman H. Long.

Sworn to and subscribed before me this 4 day of Dec., 1963.

(Signature illegible), Notary Public. My commission expires 1/25/64.

[fol. 61]

ATTACHMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
Civil Action No. 14019 B

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et als.

AFFIDAVIT

State of Louisiana
Parish of Orleans

Before Me, the undersigned authority, duly qualified and commissioned in and for the State and Parish aforesaid, personally came and appeared:

Benjamin E. Smith and Bruce C. Waltzer who, after being first duly sworn, did depose and say:

That Benjamin E. Smith, an intervenor in the above cited matter is a duly licensed and qualified attorney at law, and is the Senior partner in the firm of Smith & Waltzer, New Orleans, Louisiana. He is a member of the Executive Board of the National Lawyers Guild; is a member of the Louisiana State Bar Association; and is Chairman of the Legal Committee for the Louisiana Civil Liberties Union. His firm is also legal counsel for United Packinghouse Food and Allied Workers, AFL-CIO and port counsel for the National Maritime Union, AFL-CIO.

Affiant Smith also serves as the Treasurer of the Southern Conference Educational Fund and was arrested along with James A. Dombrowski and Bruce C. Waltzer on October 4, 1963 while he (Smith) was attending a Bar Asso-

ciation meeting and seminar on Civil Rights and Negligence Law at the Hilton Inn, Jefferson Parish, Louisiana. Affiant Smith was arrested under a warrant of arrest based on an application made under oath by one Russell R. Willie, Major of the Louisiana State Police. At the time of his [fol. 62] arrest, Smith was searched, his automobile was searched, and his home at 1073 Robert E. Lee Blvd. was also searched under warrants of search. The arrest of Smith was carried out jointly by the State Police and by officers of the Sheriff's office of Jefferson Parish. The search of Smith's automobile was carried out by State Police with the permission of the New Orleans City police. Affiant Smith's home was searched by City and State police and by one Jack N. Rogers, an attorney employed as counsel of the Louisiana Joint Legislative Committee on Un-American Activities. The law offices of Smith and Waltzer in New Orleans was searched by City and State police under a warrant of search. All warrants hereinbefore referred to were issued by the Honorable Thomas N. Brahney, Criminal District Court Judge, and were obtained by probable cause affidavits executed by the said Willie and/or the said Rogers. Copies of these affidavits of application and warrants of search and arrest are attached to and made a part of this affidavit. The search of the law offices of Smith & Waltzer was carried out at gun point and all of the firm's legal files were inspected. The home of Benjamin E. Smith was approached by police officers armed with an ax, and during the search, his family was held incommunicado.

The home of Bruce C. Waltzer at 6500 Avenue C was also searched by City and State police, and affiant Bruce Waltzer was arrested at his home and transported to jail. Bruce C. Waltzer is also a member of the Louisiana State Bar Association and a duly qualified practicing attorney, and a Junior partner in the firm of Smith & Waltzer. Waltzer is also a member of the Legal Committee of the Louisiana Civil Liberties Union; and both Smith and Waltzer are active attorneys in the prosecution and defense of Civil Rights cases. No charge was ever issued following these arrests either by the District Attorney for [fol. 63] the Parish of Orleans, or the Grand Jury for the Parish of Orleans, or the Attorney General for the State

of Louisiana; and on October _____, 1963, affiants petitioned the Criminal District Court for the Parish of Orleans for a pre-trial hearing, so that whatever evidence existed against them could be brought to the attention of the Court. This hearing was held in Criminal District Court, Division "E", Parish of Orleans, on October 25, 1963 and affiants were discharged by the Judge on the basis that no evidence was adduced against affiants and that they should, therefore, be discharged. Copies of the search and arrest involving Bruce C. Waltzer and a transcript of the hearing in Section "E" of the Criminal District Court are all attached to and made part of this affidavit.

Following this, on November 8, 1963, the Louisiana Joint Legislative Committee on Un-American Activities met in Baton Rouge, Louisiana and excluding the public, but including the Press, interrogated a series of witnesses and introduced various copies of documents seized as a result of the searches made at the time of the arrest of the affiants and at the time of the arrest of plaintiff, James A. Dombrowski. As a result of this hearing herein affiants were not invited to testify; also a resolution condemning the Southern Conference Educational Fund as a communist front and subversive organization and requesting the District Attorney for Orleans Parish to prosecute its officers.

Affiant Bruce C. Waltzer is not and never has been a member of the Southern Conference Educational Fund, which is not a membership organization. Neither of the affiants is a member of the Communist Party or any other organization listed by the Attorney General.

Affiants are both members of the Democratic Party and are active legal participants in cases and lawsuits involving Civil Rights and Civil Liberties.

[fol. 64] The District Attorney for the Parish of Orleans, through his Executive Assistant, Frank Kline, informed affiants, following November 8, 1963, while at pretrial conference with the Honorable Robert Ainsworth, Judge, that the District Attorney's office had subpoenaed the copies of the records used by the Committee at its hearing of November 8th and that in turn the Orleans Parish Grand Jury had subpoenaed copies of the records from the District Attorney's office and that the Grand Jury was to meet on

November 20, 1963; and that at that time this evidence would be presented to the members of the Grand Jury; and that it was possible that the Grand Jury would indict. Kline further stated that there had been inquiry on the part of some jurors as to when the evidence would be presented to them; and that there had been a specific charge by the Honorable Malcom O'Hara, Judge of the Criminal District Court to the Grand Jury that they investigate the Southern Conference Educational Fund and its officers.

It is on the basis of this information that affiants sort temporary relief from this Court, fearing imminent prosecution, and the affiants reiterate that they are in danger of being prosecuted under the statute used in their arrest and search. Affiants further state that were they to be indicted, said indictment would cause irreparable and serious damage to their reputation, to their law practice, to their families and friends.

Affiants further state that certain legal files relating to the Southern Conference Educational Fund were removed from their offices and that affiants sort the return of these files by Civil Action in this Court; and that before the files could be returned to them by order of the Court, the files were removed from the State of Louisiana by State police at the order of James O. Eastland, Senator, and Chairman of the Judicial Committee United States Senate. The suit to compel the return of affiants' files was filed on October 27, 1963 and allotted to the Honorable Robert Ainsworth, Judge, who ordered a hearing on Monday, October [fol. 65] 28, 1963 and requested affiant Smith to notify all parties in advance of any action he would take on affiants' application to temporarily restrain and prevent the removal of the records from the State of Louisiana. As soon as Senator Eastland received the telegram (a copy of which is attached to this affidavit and made part hereof) he ordered the State police by telephone to seize the documents held by State Police for the Senate Judicial Committee and transport them to the Chancery Clerk in Woodville, Mississippi. The State police had previously been appointed custodians of the records by one J. G. Sourwine, stating he was acting as counsel for the United States Senate Com-

mittee. Major Burbank of the State police had been appointed custody of the records by the said Sourwine by letter dated October, 1963, a copy of which is attached to this affidavit and made a part hereof.

The records seized from affiants and from Dombrowski by the searches described above, had previously been subpoenaed to be produced by Internal Securities Committee of the Judicial Committee of the Senate of the United States by subpoena dated October 5, 1963 requesting the production of the records in Washington on Tuesday October 29, 1963. A copy of this subpoena is attached to this affidavit and made a part hereof. The issuance of this subpoena was preceded by a telephone call from Sourwine to one James H. Pfister, Chairman of the Joint Louisiana Committee, informing him that the Senate Committee would issue a subpoena the next day. Affiants are convinced that their arrest and the search of their offices and homes was to intimidate them as attorneys acting in furtherance of Civil Rights cases and in their support of the Southern Conference Educational Fund. The Chairman of the Joint State Committee, Pfister, charged immediately after the arrest of affiants, that the Southern Conference Educational Fund had been engaging in racial agitation.

[fol. 66] Affiants are convinced that they were arrested because of their active participation in the Louisiana Civil Liberties Union's efforts to desegregate various aspects of life in the City of New Orleans and the State of Louisiana.

Benjamin E. Smith, Bruce C. Waltzer.

Sworn to and subscribed before me this 10 day of January, 1964.

Milton E. Brener, Notary Public.

[fol. 67]

ATTACHMENT TO OFFER OF PROOF

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION
Civil Action No. 14019 B

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et als.

AFFIDAVIT

State of Louisiana
Parish of Orleans

Before Me, the undersigned authority, duly qualified and commissioner in and for the Parish and State first above written,

Personally Came and Appeared:

Dr. James A. Dombrowski who, after being first duly sworn, declared and said:

That he is a graduate of Union Theological Seminary in New York City and has served as an instructor at that institution;

That he has served as the executive director of Southern Conference Educational Fund, Inc. and Southern Conference for Human Welfare, its predecessor organization, since 1942. His sole interest in political action is the elimination of segregation and all forms of discrimination based on race in the South through education and other non-violent methods. That his aims and purposes are identical to the expressed aims and purposes of Southern Conference Educational Fund.

That he is, and for many years has been, actively engaged in directing the attempts of SCEF to accomplish its purpose [fol. 68] and assisting in its functions directed toward that end, including the sponsoring of integrated conferences bringing together southerners of similar purpose to exchange information on how to end segregation and discrimination, the publishing of a monthly journal, The Southern Patriot, which reports activities and aspirations of people in organizations working for integration, the printing and distribution of brochures, papers and reports on the various aspects of segregated living with suggestions for action to eliminate it, stimulation of local and state groups designed to combat segregation by direct action or political action, or both, operating a news service which provides information on integrationist activities to approximately 200 publications throughout the nation, providing funds for test cases to establish rights of minority, and engaging in campaigns to inform people of their rights of free speech, assembly and petition under the 1st Amendment of the U. S. Constitution.

That affiant's employment as managing director of SCEF is on a full-time basis and is one to which affiant is devoted to the exclusion of all other political interest or activity.

That the chief weapon of the SCEF is the use of the press and speech as means of mass communication for dissemination of ideas including the printing and distribution of literature and TV and radio appeals. The effectiveness of SCEF requires the active participation of thousands of persons of good standing in their community throughout the country, particularly in the south, as well as the financial contributions of thousands of other persons who do not participate actively in the programs of the organization.

[fol. 69] That on October 4, 1963, officers of the New Orleans Police Department and Louisiana State Police Department forcibly entered the office of the Southern Conference Educational Fund, Inc. at 822 Perdido Street in the City of New Orleans. There were approximately 13 officers participating in the raid, including F. B. Alexander, Jr., the Staff Director of the Joint Legislative Committee

on Un-American Activities for the State of Louisiana. The raid began at about 3:00 P.M., at which time a large moving van was driven to the entrance of the SCEF office accompanied by squad cars. Approximately twenty trustees from the House of Detention of the City of New Orleans were utilized in ransacking the office and in removing from the office practically all books, records, literature, correspondence, files, lists and all other documents, articles and objects located in the office. A description of part of the property seized is as follows:

1. A four-drawer iron file, letter-size, containing all of the corporation correspondence relating to finance, board of directors (about 100 individual file folders of board members); taxes—federal and state, including old tax returns; meetings of the board; certain corporate certificates registered in the name of the corporation; about \$100 in postage stamps (estimated); etc.; about 30 checks, est. total \$300.
2. A four-drawer iron file similar to the one listed above containing correspondence with individuals, staff members, organizations; material on special projects sponsored by the Fund.
3. A four-drawer wooden file, letter-size, containing a [fol. 70] file of clippings on integration, some corporation correspondence on current projects; personal papers of James A. Dombrowski including a folder with certain corporate certificates.
4. Several transfer files containing corporate records and correspondence. Number of files not certain, perhaps four to six.
5. Wooden library index file containing about 16 to 20 thousand 3 x 5 cards.
6. Library of about 1,500 to 2,000 (est.) books and pamphlets, primarily on integration but including many books from affiant's personal library on literature, philosophy, religion, sociology, etc.

7. Contents of affiant's desk, as well as the contents of two additional desks and everything on a large work table. From affiant's desk, his personal check book containing some checks drawn to his name, all of his personal bank statements and other personal property.
8. Financial records of the corporation including cash book, ledger, journal, auditors' reports, cancelled checks and bank statements.
9. A file of the Southern Patriot for 21 years.
10. Photographs illustrating the southern integration movement over a period of about 20 years, largely from the Southern Patriot file.
11. Pictures from affiant's office wall, including a photograph inscribed to him by Mrs. Eleanor Roosevelt, a letter from Franklin D. Roosevelt to Dr. Frank Graham, president of the Southern Conference for [fol. 71] Human Welfare; a letter to affiant from Albert Einstein; a photograph inscribed to him from Mrs. Mary McLeod Bethune; photograph inscribed of Aubrey W. Williams and friend; a framed award to the Southern Patriot by the school of Journalism of Lincoln University;
12. Three posters from affiant's office wall: one a full page ad from an Atlanta paper by the Committee on Appeal for Human Rights; a poster in color We Shall Overcome from the March on Washington for Jobs & Freedom; and a full page ad from the New York Times entitled Love, the Greatest Thing in the World.
13. Contents of a storeroom including records, several thousand sheets of blank stationery, letterheads, bond paper, etc., probably 5 to 10 thousand blank receipts, numbered and printed in duplicate and triplicate, also various forms; probably 5M to 10M pamphlets, brochures, etc.
14. Mailing list of The Southern Patriot, about 10,000 names.

That in addition, some of the officers proceeded to affiant's home at 715 Governor Nichols Street and proceeded to search the same and to seize many items including affiant's wife's personal check book, certain checks payable to her, books, address books, blank stationery, portfolio, and that the said officers then proceeded to search his personal automobile located nearby and removed therefrom a single volume to-wit: Henry David Thoreau's Journal, and a notebook containing some personal reflections on same.

That affiant was thereupon placed under arrest and booked with the violation of the Louisiana Statutes concerning subversive activity and communist control. No formal charges were ever brought but on October 25, 1963, [fol. 72] a preliminary hearing was held in Section E of the Criminal District Court for the Parish of Orleans in No. 181-975 of that Court, and that after hearing evidence, the Court discharged affiant from the arrest status on grounds that the arrest warrant was improvidently issued and that there is no reasonable cause for the arrest.

That immediately subsequent to this hearing there have been many public statements made by Representative James H. Pfister and by Jack Rogers, Counsel for the Joint Legislative Committee, concerning the intentions of the committee to hold legislative hearings in Baton Rouge and to seek criminal charges against affiant and others for alleged violation of the above mentioned statutes.

That on November 15, 1963, it was reported in the public press and via radio and television that the Criminal District Court had charged the Orleans Parish Grand Jury with responsibility for investigating violations of the above mentioned statutes. That on the Court's instructions the Orleans Parish Grand Jury had subpoenaed copies of the confiscated records of the Southern Conference Educational Fund. That it was the stated intention of counsel for the Joint Legislative Committee to appear before the Orleans Parish Grand Jury on Thursday, November 21, 1963, to present alleged evidence against affiant and others for the purpose of securing indictment against them. That on about November 8 the Joint Legislative Committee on Un-American Activities met in Baton Rouge and adopted a

resolution, widely reported in the public press, branding SCEF as a communist front organization, and calling upon the Orleans Parish District Attorney to take prosecutive action against affiant and others.

[fol. 73] That affiant is guilty of no crime or any violation of Louisiana Law, including the above mentioned statutes. That the various documents, pamphlets, literature etc. seized on October 4th are not contraband, but that despite this fact they have never been returned to SCEF or to affiant. The mere lodging of a criminal charge or indictment against affiant or other officers of SCEF, however, could as effectively thwart the purposes of SCEF, as could a criminal trial and conviction.

That affiant knows from his experience of many years as managing director of SCEF that there is a general reluctance on the part of a very large portion of the contributors and active participants of both white and negro races to be identified with the civil rights movement because of the fear of being called communists or subversive, or fear of being linked with a group so labeled regardless of the merit or lack of merit of such allegation. The fear of such charges or allegations, regardless of their lack of basis in fact, effectively deters many who would otherwise be disposed to participate. That a large portion of the contributors to SCEF, particularly in the South, do not want and do not intend that their names should be used or utilized in any manner. They expect the fact of their contribution or association with the organization to remain confidential due to the unpopularity of the cause espoused by SCEF in their communities. They fear general ill will and possible economic reprisals. The fear of publicity attending the fact of their contribution or association deters many who would otherwise be disposed to contribute or associate themselves with SCEF and other civil rights organizations. The action of the Joint Legislative Committee on October 4, 1963, including the raids, arrests, searches and seizures is well calculated to destroy the effectiveness of Southern Conference Educational Fund. It requires tremendous expense to attempt to reconstruct the lists, books, records and ledgers that have been

confiscated and not returned. It greatly deters contributors and participants; some contributors because of the fear of publicity attending the fact of their contribution, and other contributors and participants because of the association with an organization labeled or accused of subversion. Fund raising activities as well as other activities of SCEF above mentioned have been hurt to some extent by the police action taken on October 4, 1963, although the exact extent of the harm cannot be determined for some time.

That criminal charges or indictments against affiant or others would render a tremendously damaging blow to SCEF and to affiant insofar as the effectiveness of their endeavor is concerned. Criminal charges and indictments will greatly deter contributors and active participants and would seriously lessen the effectiveness and the extent of the operation of SCEF in its avowed purpose of elimination of segregation.

That criminal charges or indictments could themselves effectively hamper and stymie the function of SCEF and the activities of affiant in connection therewith irregardless of eventual trial and acquittal, and that the lodging of such charges and indictments could as effectively stymie and hamper the work of the organization and of affiant as could conviction.

James A. Dombrowski.

Sworn to and subscribed before me this 10 day of Jan., 1964.

Milton E. Brener, Notary Public.

[fol. 75]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

Wisdom, John Minor, Judge, West, E. Gordon, Judge,
Ellis, Frank B., Judge.

NEW ORLEANS DIVISION

Division (Three Judge Court)

No. 14019

Civil Action

[Title omitted]

MINUTE ENTRY—January 10, 1964

This cause came on this day for hearing on question of admissibility of evidence after the Court has found a state statute constitutional.

Present:

John A. Jackson, Jr., Esq., Attorney for State of Louisiana;

Rudolph Becker, III, Esq., Attorney for District Attorney, Parish of Orleans;

Milton E. Brener, Esq., Arthur Kinoy, Esq., Attorneys for Plaintiffs;

Steve A. Alford, Esq., Attorneys for Burbank and Willie;

Robert J. Zibilich, Esq., Attorney for Benjamin E. Smith and Bruce C. Waltzer;

Jack N. Rogers, Esq., Attorney for Pfister.

Argument.

Rebuttal.

The majority of the Court, Judge E. Gordon West and Judge Frank H. Ellis, announce that they have decided that the Statute is Constitutional on its face, and that the com-

plaint fails to state a claim, upon which relief can be granted, accordingly;

It Is Now Ordered that Temporary Restraining Order previously issued be, and the same is hereby Vacated and Set Aside, and the State is relieved from effect of prior order issued directing it to produce the evidence.

Judge Wisdom dissents, and reasons will be assigned later.

[fol. 76] Counsel for Plaintiffs orally moves for a stay, pending appeal.

It Is Ordered that motion of plaintiffs for a stay pending appeal be, and the same is hereby, Denied, the Court having considered the stay, and the majority of the Court, Judge E. Gordon West and Judge Frank B. Ellis having declined to issue a stay order.

Judge Wisdom dissents.
A. P. Tureaud, Esq.

[fol. 77] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
CA 14019

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PRISTER, INDIVIDUALLY, etc., et. al.

Ellis, Frank B.—Judge and West—Judge.

OPINION—February 4, 1964

This is a suit by James A. Dombrowski, Executive Director of Plaintiff Southern Conference Educational Fund, Inc. (hereinafter referred to as the SCEF) and the SCEF seeking to have declared unconstitutional Louisiana Re-

vised Statutes Title 14, Sections 358 through 388, referred to as the Subversive Activities and Communist Control Law, and Louisiana Revised Statutes, Title 14, Sections 390 through 390.5, referred to as the Communist Propaganda Control Law.

The alleged purpose of the SCEF is to (1) promote the general welfare, and (2) to improve the economic, social and cultural standards of the Southern people in accordance with the highest American democratic institutions and ideals.

Defendants are James H. Pfister, a Louisiana State Representative and Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature; Russel R. Willie, a Major in the Louisiana State Police; Jimmie H. Davis, Governor of the State of Louisiana; Jack P. F. Gremillion, Attorney General of the State of Louisiana; Thomas D. Burbank, Commanding Officer of the Division of Louisiana State Police; and Jim Garrison, District Attorney for the Parish of Orleans, State of Louisiana. All parties defendant are sued individually and in their official capacities.

Jurisdiction of the Court over the complaint is sought under Title 28, United States Code, Sections 1331 (a), 1343(3) and (4), 2201 and 2202; Title 42, United States [fol. 78] Code, Sections 1981, 1983, and 1985.

Plaintiffs basically set forth their cause of action in ten paragraphs set forth in Appendix A.

After suit was filed a petition of intervention and complaint was filed by Benjamin E. Smith and Bruce C. Waltzer (hereafter referred to as Intervenor). Mr. Smith is Treasurer of the SCEF and Mr. Waltzer is a "friend and supporter" of the SCEF. The petition of intervention and complaint is fully set forth in Appendix B.

Plaintiffs seek that a permanent injunction issue " . . . restraining the defendants, their agents and attorneys from the enforcement, operation or execution of [the statutes in question] and, restraining the defendants, their agents, and attorneys from impeding, intimidating, hindering and preventing the plaintiffs or members, friends and supporters of plaintiff corporation from exercising the

rights, privileges, and immunities guaranteed to them by the Constitution and laws of the United States..." The complaint terminates with a demand that a declaratory judgment issue declaring the statutes in question void on their face, and null and void as violative of the constitution of the United States. Plaintiffs requested that a three-judge Court be convened to hear and determine the proceeding.

Intervenors ask for similar relief and also request that Foreman of the Orleans Parish Grand Jury, the individual members thereof and the Honorable Malcolm V. O'Hara, Judge, be made parties defendant. In addendum to the complaint the intervenors ask that a permanent injunction issue restraining the Orleans Parish Grand Jury and the Judge in Charge thereof, the Honorable Malcolm V. O'Hara, from enforcing the statutes in question.

Pursuant to plaintiff's request, a three-judge court was convened by the Honorable The Chief Judge for the Fifth Circuit to hear and determine the controversy.

In open court, and prior to a hearing, the court ordered [fol. 79] that the motion for leave of court to intervene be granted, there being no objection by defendants. However, the intervention, insofar as it names the Foreman of the Orleans Parish Grand Jury, the individual members thereof and the judge presently in charge of the Grand Jury, the Honorable Malcolm V. O'Hara, as parties defendant, is Denied.

The first phase of this case was argued on December 9, 1963, and was limited to the constitutionality of the statutes on their face, which was decided in the affirmative by a divided court; and a second hearing was held on January 10, 1964, for the sole purpose of determining after the statute had been constitutionalized whether or not these plaintiffs should be granted a "full blown" trial on the merits, in an attempt to show an unconstitutional application.

In considering this application the judges in the majority have assumed to be true all of the averments made in the petition.

Generally it may be soundly said that if the statutes in question are constitutional then the State Grand Jury, its Foreman, the Judge in charge and other state law enforcement officials may validly proceed with the enforcement and operation of same; and if the statutes are unconstitutional, the proper state or federal court, upon proper application by parties affected, would be the competent forum to enjoin the enforcement and operation of the statute by all officials.

The pleadings reveal that the plaintiffs and intervenors have been engaged, among other things, in urging the southern negro to exercise his constitutional rights to vote, to attend the school of his choice, and to have and enjoy all rights which are foreclosed to him by segregation barriers. The Court would like to first point out that these endeavors, if properly sought, are praiseworthy indeed for we will never enjoy a first class democracy as long as there walks second class citizens among the nearly two hundred million Americans.

However, this should never operate as to bar the state from proceeding in an orderly manner to enforce its own protective statutes, particularly where the federal government has not pre-empted the field. The State should, and does, have the right to determine in an orderly manner which organization or organizations are primarily or secondarily designed to overthrow, destroy, or to assist in the overthrow or destruction of the constitutional form of local government by violence, force or any other unlawful means.

Can we deny the State the basic right of self-preservation? The right to protect itself? If so, truly this would be a massive emasculation of the last vestige of the dignity of sovereignty. This brings us to the specific statutes in question and the injunction requested.

"Federal injunctions against state criminal statutes either in their entirety or with respect to their separate and distinct prohibitions, are not to be granted as a matter of course, even if such statutes are unconstitutional," *Watson v. Buck*, 313 U. S. 387, 400. Federal Courts traditionally have refused, except in rare instances to enjoin criminal prosecutions under state penal laws. This principle is im-

pressively reinforced when not merely the relations between coordinate courts, but between coordinate political authorities are in issue, *Stefanelli v. Minard*, 342 U. S. 117. This has been manifested in numerous decisions of the Supreme Court involving a State's enforcement of its criminal law, e.g. *Douglas v. City of Jeanette*, 319 U. S. 157; *Watson v. Buck*, *supra*; *Beal v. Missouri Pacific Railroad Company*, 312 U. S. 45; *Cleary v. Bolger*, 371 U. S. 392.

Also see *England v. Louisiana Medical Board*, No. —, October Term, 1963 — U. S. —, wherein Mr. Justice Douglas in a special concurring opinion, uses the following language setting forth the circumstances under which the federal injunctive power has been denied:

[fol. 81] "A federal court will normally not entertain a suit to enjoin criminal prosecutions in state tribunals; with review of such convictions by this court being restricted to constitutional issues. *Beal v. Missouri Pac. R. Co.*, 312 U. S. 45. A federal court declines to entertain an action for declaratory relief against state taxes because of the federal policy against interfering with them by injunction. *Great Lakes Co. v. Huffman*, 319 U. S. 293. Where state administrative action is challenged, a federal court will normally not intervene where there is an adequate state court review which is protective of any federal constitutional claim. *Burford v. Sun Oil Co.*, 319 U. S. 315; *Alabama Comm'n v. Southern R. Co.*, 341 U. S. 341. The examples could be multiplied where the federal court adopts a hands-off policy and remits the litigants to a state tribunal."

These basic principles have been qualified under exceptional circumstances to allow interference when there is a clear showing that an injunction is necessary in order to afford adequate protection of constitutional rights, *Spelman Motor Company v. Dodge*, 295 U. S. 89; *Terrace v. Thompson*, 263 U. S. 197; *Packard v. Banton*, 264 U. S. 445; *Tyson v. Banton*, 273 U. S. 418; *Cline v. Frank Dairy Company*, 274 U. S. 445; *City of Houston v. J. K. Dobbs Company of Dallas*, 5 Cir. 232 F. 2d 428; *Morrison v. Davis*,

5 Cir. 252 F. 2d 102; *United States v. Wood*, 5 Cir. 295 F. 2d 172.

Assuredly the Supreme Court did not intend to countenance the application of this exception to the use of injunctive process by the federal system in such a way as to deprive the state and local courts of this nation in the exercise of their sovereign rights of self-protection. This Court should jealously guard these plaintiffs in their constitutional rights to equal protection of the laws, yet in our zeal to protect we should not consciously or unconsciously undermine the whole fabric of state and federal relationship as it struggles to survive its inherent constitutional posture.

The instant case postulates the basic constitutional issue whether threatened prosecution in the state courts imbued as it is with an aura of sedition or treason or acts designed to substitute a different form of local government by other [fol. 82] than lawful means, may properly be blocked and effectively thwarted by Federal action.¹

The general rule of *Watson v. Buck*, supra, is to be applied where the paramount right of a state to self-preservation is at issue.

Mr. Justice Frankfurter, for the majority of the court, cautioned us in *Steffanelli v. Minard*, supra, at Page 123-124, that

"[W]e would expose every State criminal prosecution to insupportable disruption. Every question of procedural due process of law—with its far-flung and un-

¹ None of the cases cited involved so fundamental an element of state sovereignty as that of self-preservation, e.g. *Spellman* contested the New York Code of Fair Competition for the Motor Vehicle Retailing Trade; *Terrace* contested a Washington law forbidding aliens from owning land; *Packard* contested a New York law requiring motor carriers to post a bond; *Tyson* contested a New York law forbidding resale of tickets to the theatre, etc., as a price in excess of fifty cents of its printed value; *Cline* tested the Colorado Anti-Trust Act; *City of Houston* involved an ordinance forbidding the sale of food to airlines by other than franchised concessionaires; *Morrison* involved the desegregation of the New Orleans public transit system; and *Wood* involved voter intimidation.

defined range—would invite a flanking movement against the system of State Courts by resort to the federal forum, with review if need be to [the Supreme] Court to determine the issue.”

The Court will not presuppose incompetency or inability of the State Court judges to enforce federally protected constitutional rights. If the evidence has been illegally seized, it may be so declared in those courts; if the statutes in question are unconstitutional, they may be so declared by those Courts, Courts of Appeal, State Supreme Court, and an unsatisfied litigant still has ample opportunity for ultimate review by the United States Supreme Court of the federal questions involved, *Fenner v. Boykins*, 271 U. S. 240. A three-judge federal court should not be used as a vehicle to enjoin future enforcement of state statutes, constitutional or otherwise, *Watson v. Buck*, supra.

Nor is the instant case similar to *Aelony v. Pace* and *Harris v. Pace*, Civil Actions No. 530 and 531 respectively, Middle District of Georgia, decided Nov. 1, 1963, — F. Supp. —, for those cases involved the enjoining of a threatened prosecution under the Georgia “Insurrection Statute” which has been held unconstitutional in its application [fol. 83] in *Herndon v. Lowry*, 301 U. S. 242, and the “Unlawful Assembly Statute” which had just recently been held unconstitutionally vague in *Wright v. Georgia*, 373 U. S. 284.² The *Aelony* and *Harris* cases involved the purely unconstitutional situation of a defendant being held without bail for a misdemeanor.³

² It is significant to note that the *Herndon* and *Wright* cases both found their way to the United States Supreme Court via the state courts, and not by the flanking-movement to a three-judge federal district court.

³ The dissenting opinion, per Judge Elliott, correctly points out that the equity powers of a federal court should not be invoked to interfere by injunction with threatened criminal prosecutions in a state court. He further states that “... I would require the assessment of reasonable bail in those instances where no bail has been assessed. I would impinge no further upon the prerogatives of the state courts . . .” After stating that the constitu-

It was said by Mr. Justice Holmes in *The Sacco-Vanzetti Case*, Transcript of the Record 5516, that "[t]he relation of the United States and the Courts of the United States is a very delicate matter that has occupied the thoughts of statesmen and judges for a hundred years and cannot be disposed of by a summary statement that justice requires me to cut red-tape and to intervene."

This brings us first to the narrow question of supersession, that is, or whether the State of Louisiana can investigate, indict and prosecute for sedition, subversion, or communist activity directed against the state or local government.

First of all the statutes differ from the others found in Title 14 of the Louisiana Revised Statutes, better known as the Louisiana Criminal Code, in that the balance of the Code deals with the protection of the individual member of society, whereas, the statutes under consideration deal solely with the protection of the constitutional form of local government chosen collectively by all of the members of society.

[fol. 84] Louisiana is not the only state in the Union with sedition or treason or subversive activities and communist control laws. [See Appendix C]

Pennsylvania v. Nelson, 350 U. S. 497, involved the first such statute to be subjected to constitutional interpretation. Defendant-Respondent Steve Nelson, an acknowledged communist, was convicted under Section 207 of the Pennsylvania Penal Code, commonly referred to as the Pennsylvania Sedition Act which proscribed sedition against the State of Pennsylvania and the United States. He was sentenced to imprisonment for twenty years and was ordered to pay a fine of \$10,000.00 and to pay the costs of prosecution in the sum of \$13,000.00. The Superior

tionality of the same statutes were then pending before the Supreme Court of Georgia, he continues. "... For us at this time to deal with the same questions about to be considered by the Supreme Court of the state strikes me as being an unwarranted interference with an embarrassment to the state court proceedings and a breach of those principles of comity historically governing the relations between the courts of the states and the courts of the United States."

Court affirmed and the Supreme Court of Pennsylvania reversed on the narrow issue of supersession of the state law by the Federal Smith Act, 18 U. S. C. A. 2385.

The United States Supreme Court affirmed, "[s]ince we find that Congress has occupied the field to the exclusion of parallel state legislation, that the dominant interest of the federal government precludes state intervention, and that administration of state acts would conflict with the operation of the federal plan, we are convinced that the decision of the Supreme Court of Pennsylvania is unassailable." *Pennsylvania v. Nelson*, supra, at Page 509.

Thus it appeared that the federal government had completely pre-empted the field of sedition against the State and Federal Governments.² The question then arose as to whether the "exclusion of parallel state legislation precluded the state from protecting itself from sedition."³ [fol. 85] The question was laid to rest in *Uphaus v. Wyman*, 326 U. S. 72:

"In *Nelson* itself we said that the 'precise holding of the court . . . is that the Smith Act . . . which prohibits the knowing advocacy of the overthrow of the government of the United States by force and violence, supercedes the enforceability of the Pennsylvania Sedition Act which proscribed the *same conduct*.' (350 U. S. at 499) The basis of *Nelson* thus rejects the notion that it stripped the States of the right to protect themselves. All the opinion proscribed was a race between federal and state prosecutors to the courthouse door. The opinion made clear that a state could proceed with *prosecutions* for sedition against the State itself; that it can legitimately investigate in this area follows a *fortiori*." (360 U. S. at 76) (Italics supplied)

² The *Nelson* subsequently received critical comments of the prevailing view in various law journals, 6 Am. U. L. Rev. 53; 6 De Paul L. Rev. 155; 30 So. Cal. L. Rev. 101; 10 Vanderbilt L. Rev. 144; 31 Washington L. Rev. 300.

³ Subsequently and upon the strength of *Nelson*, the Louisiana Supreme Court declared an entire package of State Legislation on Communist Control as unconstitutional, see *State v. Jenkins*, 107 So. 2d 648.

"Nor did our opinion in *Nelson* hold that the Smith Act has proscribed State activity in protection of itself either from actual or threatened 'sabotage or attempted violence of all kinds.'" (360 U. S. at 77)⁴

Thus it would appear that the state may validly proceed with prosecutions of sedition, treason, subversive activities and communist activities, carried on within the State and directed at the state alone.⁵ It is unnecessary, therefore, and this court will not pass on the constitutionality of the Communist Propaganda Control Law and will also leave to the State Courts the questions of unfounded search warrants and warrants of arrest, improper use by the Joint Legislative Committee of the documents allegedly improperly seized, etc.

If the action taken by this Court on January 10, 1964, is construed as validating the Communist Control Act as to its constitutionality this action is, of the Court's own motion, hereby vacated, the Court here refraining from taking [fol. 86] any action in advance of appropriate proceedings in the State Courts at the State Level. All these matters we commit to the hands of the state criminal tribunals who are equally competent to conscientiously apply protected constitutional rights, subject, of course, to proper supervision by the State Appellate-level courts and the United States Supreme Court.

A very recent case dealing with the State's overriding and compelling interest and how it is affected by the Fourteenth Amendment is *Jordan v. Hutcheson*, 4 Cir. 323 F. 2d 597, wherein it was pointed out that:

"When the court does act under the Fourteenth Amendment it must weigh the state's interest in the product of this effort against the interest of the citizen in his constitutional rights. Only if the state's interest is

⁴ After the *Uphaus* decision the Louisiana Legislature enacted the statutes in question deleting the prohibitive language making it a crime to advocate the overthrow of the United States Government. Act 270 of 1962, RS 14:358-388.

⁵ This is also the prevailing view expressed in a number of legal periodicals, e.g. 73 *Harvard L. Rev.* 163; 20 *Louisiana L. Rev.* 599; 28 *Geo. Washington L. Rev.* 461; 38 *Texas L. Rev.* 334.

overriding and compelling will the courts condone an invasion of those rights for which the plaintiffs here seek protection." (Footnote omitted)

The case at bar presents one of the most basic and compelling interests that the state could have, i.e. the basic interest of self-preservation and the right to enforce this interest in a lawful manner through its grand juries and district attorneys, the organic law of the state protecting it against subversion and treason where directed against the state alone.

Moreover, the *Jordan* case, *supra*, dealt with an injunction directed to a state legislative committee as distinguishable from the instant case which strikes at the very heart of the state's organic authorities dealing with law and order.

It has also been urged upon us that this very court has declared Louisiana Revised Statutes 14:385 as unconstitutional, *State v. NAACP*, 181 F. Supp. 37, probable jurisdiction noted, 364 U. S. 839; affirmed 366 U. S. 293. The Court would like to point out that that case involved the unconstitutional application of the statutes to the National Association for Advancement of Colored People, a valid, lawful, private activity. Whether or not these statutes may be constitutionally applied to an invalid, unlawful secret [fol. 87] activity remains an open question which we likewise commit into the hands of the state tribunals.⁶

During the first hearing of the matter it was indicated that the court would hear the arguments on the motion to quash and on the constitutionality of the act insofar as the face of it was concerned. It was determined that if the Court should hold the statute constitutional on its face that there would be another hearing for the reception of evidence. A second hearing was held on the question of whether a full trial would be permitted to show unconstitutional application.

⁶ See *People of the State of New York ex rel. Bryant v. Zimmerman*, 276 U. S. 63, wherein the Court held constitutional a similar statute curtailing the activities of the Ku Klux Klan stating that the First Amendment does not protect associations for unlawful purposes.

The Court is of the opinion that a hearing for the admission of evidence is not necessary where only questions of law are presented, and where plaintiff's allegations for the purpose of this motion are admitted to be true and would not either in law or in fact entitle him to injunctive relief, *Securities & Exchange Commission v. Groze*, 156 F. Supp. 544; *Schlosser v. Commonwealth Edison Company*, 7 Cir. 250 F. 2d 478, cert. den. 357 U. S. 906; Cf. *Sewell v. Pegelow*, 4 Cir. 291 F. 2d 196, and if a hearing reveals that [fol. 88] plaintiff has not stated a claim upon which relief can be granted, and cannot state such a claim, the court may dispose of the case finally by dismissing the complaint. *Mast Foss & Company v. Stover Mfg. Co.*, 177 U. S. 485, and that is what this court proposes to do.

Plaintiffs argued vociferously that the Court should hold a special hearing for the reception of evidence that these statutes, if constitutional, have been unconstitutionally applied as to them. This court will not gainsay the rule that evidence has been frequently admitted to show unconstitutional application of statutes. *NAACP v. Alabama*, 357 U. S. 449; *Gates v. Little Rock*, 361 U. S. 516; *Louisiana v. NAACP*, 366 U. S. 293; *Gibson v. Florida*, 372 U. S. 539; *NAACP v. Button*, 371 U. S. 415; but here the very vitals of our constitutional system of government are on the line.

The reception of evidence is a double-edged blade. It will cut to the quick both ways. If plaintiffs are permitted to introduce evidence of an unconstitutional application of the statutes, respondents would certainly be entitled to follow with evidence that the individual plaintiff is a Communist and that the corporate plaintiff is a Communist-front organization, and that the statute, as applied, was a constitutional application. In effect, these litigants, plaintiffs, defendants and intervenors, would indulge in a Star Chamber proceeding with all the "foldrol" and publicity attendant therewith.

For the good of all it is to be hoped that this case will reach the Supreme Court so that the matter of State-Federal relations in the judicial field may be clarified. If the federal district judges are to act as a police force to ride herd over state and municipal courts then we had best be so instructed and the matter for once and for all laid to

rest along with a vital part of the state judicial system already weakened by a constant federal encroachment in both the statutory and judicial fields.

[fol. 89] This country was nurtured to maturity by leaders who, in the nineteenth century, constantly alerted the people of this nation to the danger of giving preferential treatment to any one branch in our three-pronged governmental system over the other. Apprehension was expressed by Jefferson when he stated:

"The great object of my fear is the Federal Judiciary. That body, like gravity, ever acting with noiseless foot, and in alarming advance, gaining ground step by step, and holding what it gains, is engulfing insiduously the [State] governments into the jaws of that which feeds them."

Thomas Jefferson to Spencer Roane (1821)

We must stride forward at all times to purify our democracy but let it not be said that the judiciary functioning as both a court and a congress took away inherent rights from one group, religious, ethnic, etc., in our society in order to bestow it upon another. All should be treated alike.

The application for the injunction will be denied and the suit dismissed, each party to bear its own costs, for failure to state a claim upon which relief can be granted.

Frank B. Ellis, United States District Judge,

E. Gordon West, United States District Judge.

February 4, 1964

[fol. 90]

APPENDIX A TO OPINION

THE CAUSE OF ACTION AS ALLEGED IN THE COMPLAINT

11. The defendants herein, under color of certain statutes of the State of Louisiana, have allegedly entered into a plan or conspiracy with other persons to the plaintiffs

unknown to subject or cause to be subjected the plaintiffs, citizens of the United States, to the deprivation of rights, privileges and immunities secured to them by the Constitution and laws of the United States.

12. Pursuant to this plan or conspiracy the defendants have attempted to and threaten to continue to attempt to prosecute the individual plaintiffs under the color and authority of certain state statutes, namely Louisiana Revised Statutes 14:358 et seq. and 14:390 et seq.

13. Defendants Pfister and Willie, so say the plaintiffs, without proper legal authority, attempted to institute the prosecution of the individual plaintiffs by obtaining on October 2, 1963, certain warrants of arrest as well as search warrants based upon sworn affidavits alleging that the plaintiffs had conspired to violate the aforementioned statutes. These arrest and search warrants were served and acted upon by police officers under the control of the defendants herein. Despite the fact that the warrants of arrest were summarily vacated by a state Criminal District Court for the Parish of Orleans which gave the plaintiffs, without delay, the full relief sought upon a holding that there was no probable cause for the issuance of the warrants based upon sworn affidavits alleging that the continues to threaten to attempt to obtain new prosecutions of the plaintiffs and to hold legislative hearings under the same statutes.

14. It is averred that on Friday, November 8, 1963, the Joint Legislative Committee on Un-American Activities of [fol. 91] the Louisiana Legislature held an "open hearing" in Baton Rouge, Louisiana, at which hearing defendant Pfister, as well as counsel for the said committee, Rogers, utilized photostats of certain documents seized on October 4, 1963, under the alleged authority of the aforesaid search warrants. The Committee thereupon adopted a resolution naming plaintiff corporation as a "communist front" and further calling upon defendant Garrison to prosecute officials of this corporation including plaintiff Dombrowski, under the provisions of the statutes herein cited. Pfister and Rogers have further publicly announced their intention

of delivering to Garrison copies of documents illegally seized from the plaintiffs for the purpose of presenting the said copies to the Orleans Parish Grand Jury and for institution of criminal proceedings under the same statutes.

15. It is alleged that Louisiana Revised Statutes 14:358 through 14:388 and Louisiana Revised Statutes 14:390 through 14:390.5 are void and illegal on their face as applied to the plaintiffs herein, in that they violate the Constitution of the United States and in particular the First, Fourth, Fifth, Eighth and Fourteenth Amendments thereto. These state statutes violate the fundamental guarantees of free speech, press, assembly and the right to petition the government for a redress of grievances. They violate the guarantee of due process of law in that they are vague and indefinite and fail to meet the requirement of certainty in criminal statutes. They violate the prohibitions against ex post facto legislation and bills of attainder and represent an unconstitutional delegation of legislative power, all in violation of the Constitution of the United States.

16. The aforesaid state statutes are likewise void and illegal and of no force or effect in that they invade areas preempted to the exclusive jurisdiction of the United States by statutes and laws enacted by the Congress of the United States.

[fol. 92] 17. Pursuant to the aforesaid conspiracy and plan the defendants have threatened and continue to threaten to enforce the said unconstitutional void and illegal state statutes against the plaintiffs herein for the sole purpose of subjecting and causing to be subjected the plaintiffs and the members, friends and supporters of the plaintiff corporation to the deprivation of rights, privileges and immunities secured to them by the Constitution and laws of the United States.

18. The plaintiffs and the members, friends and supporters of the plaintiff corporation have been attempting through peaceful and non-violent means to achieve the elimination of all forms of racial segregation in the states of the South and the State of Louisiana and to assist and encourage Negro citizens to exercise their rights to register

and vote in federal and state elections. These objectives are specifically protected and guaranteed by the Constitution of the United States and the Thirteenth, Fourteenth and Fifteenth Amendments thereto. In their constant efforts to achieve these constitutionally protected efforts, the plaintiffs and the members, friends and supporters of the plaintiff corporation have been attempting to exercise rights guaranteed under the First and Fourteenth Amendments to freedom of speech, press, assembly and association and the right to assemble, associate and petition for a redress of grievances.

19. Unless this Court restrain the operation and enforcement of these void, invalid and unconstitutional state statutes, the plaintiffs, and the members, friends and supporters of the plaintiff corporation will suffer immediate and irreparable injury.

The sole purpose, intention and effect of threatening to enforce said statute is to deter, intimidate, hinder and prevent the plaintiffs and the members, friends and supporters of plaintiff corporation from exercising their fundamental [fol. 93] constitutional rights guaranteed under the First and Fourteenth Amendments in their efforts to enforce the equality under the law guaranteed by the Thirteenth, Fourteenth and Fifteenth Amendments.

It is prayed that unless this court restrains the operation and enforcement of these void, invalid and unconstitutional state statutes, the plaintiffs and the members, friends and supporters of the plaintiff corporation will continue to suffer the most serious, immediate and irreparable injury in that they will continue to be deterred, intimidated, hindered and prevented from exercising elementary and fundamental Federal constitutional rights.

It should be noted that the only time these plaintiffs sought relief in a state tribunal the relief was forthwith granted by the state criminal district court.

[fol. 94] CLERK'S NOTE:

APPENDIX B TO OPINION—Petition of Intervention and Complaint is omitted from the record here as it appears on page 18, *supra*.

[fol. 97]

Civil Action 14,019

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et al.

APPENDIX C TO OPINION

ALABAMA

Code of Alabama, Title 14, Sections 22(1) and 22(2),
Sections 97(1) through 97(8).

ALASKA

Sedition Act, Alaska Statutes 1962, §11.50.010, et seq.

ARIZONA

Arizona Revised Statutes, Title 16, Sections 205 & 206.

ARKANSAS

Arkansas Statutes, Title 14, Sections 4125 through
4131.

CALIFORNIA

California Codes, Title 5, Chapter 1, Sections 350,000
through 350,007.

COLORADO

Colorado Revised Statutes, Chapter 40, Article 23, Sec-
tion 7.

CONNECTICUT

Conn. Gen. Stat. Ann. Title 53, Sections 1 through 8.

DELAWARE

Delaware Code Annotated, Title 11, Chapter 3, Subchapter LII, Sections 861 through 863.

FLORIDA

Florida Statutes Annotated, Title 44, Chapter 876, Sections 1 through 4.

GEORGIA

Georgia Code Annotated, Title 26, Chapter 9A, Sections 901a through 912a.

HAWAII

Revised Laws of Hawaii, Title 40, Chapter 361, Sections 1 through 12.

IDAHO

Idaho Constitution, Article 5, Section 5.

ILLINOIS

None.

INDIANA

Burns Indiana Statutes, Title 10, Chapter 52, Sections 5201 through 5209.

IOWA

Iowa Code Annotated, Chapter 689.

KANSAS

Corrick's General Statutes, Chapter 21, Article 3, Sections 301 through 308.

KENTUCKY

Kentucky Revised Statutes, Chapter 432, Section 10 et seq.

LOUISIANA

Louisiana Revised Statutes, Title 14, Sections 358 through 388 and 390 through 390.5.

MAINE

Revised Statutes of Maine, Chapter 143, Section 4.

[fol. 98]

MARYLAND

Michie's Annotated Code of Maryland, Article 85A, Sections 1 through 19.

MASSACHUSETTS

Massachusetts General Laws Annotated, Chapter 264, Sections 16 through 23.

MICHIGAN

Rice's Michigan Statutes Annotated, Title 28, Chapter 84, Sections 812 through 813(4).

MINNESOTA

Minnesota Constitution, Article 1, Section 9.

MISSISSIPPI

Mississippi Code Annotated, Sections 4194.01 through 4194.10.

MISSOURI

Missouri Revised Statutes, Chapter 562.

MONTANA

Smith's Revised Code of Montana, Chapter 44, Sections 4401 through 4410.

NEBRASKA

Revised Statutes of Nebraska, Title 28, Article 7(i), Sections 747 through 750.

NEVADA

Nevada Constitution, Article 1, Section 19.

NEW HAMPSHIRE

New Hampshire Revised Statutes Annotated, Chapter 588, Sections 1 through 16.

NEW JERSEY

New Jersey Statutes Annotated, Title 2A, Chapter 148, Articles 1 through 5.

NEW MEXICO

New Mexico Code, Title 4, Chapter 15, Section 1, et seq.

NEW YORK

McKinney's Consolidated Laws of New York, Penal Code, Section 2380.

NORTH CAROLINA

Michie's General Statutes of North Carolina, Chapter 14, Articles 3 through 3A.

NORTH DAKOTA

North Dakota Constitution, Article 19; North Dakota Code Annotated, Title 12, Chapter 7, Section 1 et seq.

OHIO

Baldwin's Ohio Revised Code & Service, Title 29, Chapter 2921, Sections 1 through 27.

OKLAHOMA

Oklahoma Statutes Annotated, Title 21, Chapter 52, Sections 1266.1 through 1266.11 and 1267.1 through 1267.2.

OREGON

Oregon Constitution, Article 1, Section 24.

PENNSYLVANIA

Purdon's Pennsylvania Statutes, Title 18, Section 3811.

RHODE ISLAND

General Laws of Rhode Island, Title 11, Chapter 43,
Sections 11 through 14.

SOUTH CAROLINA

Code of Laws of South Carolina, Title 16, Chapter 9,
Sections 581 through 589.

[fol. 99]

SOUTH DAKOTA

South Dakota Code, 13.0701.

TENNESSEE

Tennessee Code Annotated, Title 39, Chapter 44, Sec-
tions 4405, 4420 through 4423.

TEXAS

Vernon's Texas Civil Statutes, Title 126A, Article
6889.

UTAH

Utah Constitution, Article 1, Section 19.

VERMONT

Vermont Statutes Annotated, Title 13, Chapter 67, Sec-
tion 3405.

VIRGINIA

Code of Virginia, Title 18, Chapter 8, Article 1, Sec-
tions 418 through 422.

WASHINGTON

Revised Code of Washington Annotated, Title 9, Chapter 81, Sections 10 through 130.

WEST VIRGINIA

West Virginia Code of 1961, Sections 5908 et seq.

WISCONSIN

West's Wisconsin Statutes Annotated, Section 946.03.

WYOMING

Michie's Wyoming Statutes, Title 9, Chapter 8, Sections 693 through 699.

[fol. 100]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
Civil Action No. 14,019
Division "B"

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, individually, etc., et al.

DISSENTING OPINION—Filed February 20, 1964

Wisdom dissenting:

I respectfully dissent.

The main issue in this case is not, as the majority opinion declares, "the State's basic right of self-preservation". No one questions this right.

The main issue is whether the State⁷ is abusing its legislative power and criminal processes: whether the State, under the pretext of protecting itself against subversion, has harassed and humiliated the plaintiffs and is about to prosecute them solely because their activities in promoting civil rights for Negroes conflict with the State's steel-hard policy of segregation. They ask the federal court to defend their federally protected rights.

The Court declined to act on the constitutional issues the case presents and refused the plaintiffs an opportunity to offer evidence in proof of their case.⁸ It is not clear why it did. To me, the majority's decision appears to rest on a sort of visceral feeling that somehow, if relief were granted, the Court would be impinging on States' Rights.

The concept of the States as political bodies rather than administrative units of the national government tends to fractionate power, preserve regional differences, encourage home rule, and promote democracy at all levels of Government. [fol. 101] These characteristics of American federalism are essential to the kind of government I want to live under. I say, however, with the Madison of the Constitutional Convention:

⁷ The prime mover against the plaintiffs is the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature. The plaintiffs sued James H. Pfister, Chairman of that Committee, individually and as Chairman. The other defendants are Jimmie H. Davis, Governor of the State; Jack F. F. Gremillion, State Attorney General; James Garrison, District Attorney for the Parish of Orleans; Thomas D. Burbank, Commanding Officer of the State Police; and Russell R. Willie, a Major in the State Police. For convenience, the majority opinion speaks of all or some of these individuals when it uses the term "State". I do the same.

Also for convenience, "plaintiffs" includes "intervenor" and the Louisiana Anti-subversion Law refers both to R.S. 14:358-388, The Subversive Activities and Communist Control Law, and R.S. 390-390.5, the Communist Propaganda Control Law.

⁸ The plaintiffs have offered the affidavits of Dr. Martin Luther King, Rev. Fred L. Shuttlesworth, Rev. C. T. Vivian, Dr. Herman Long, and Bishop Edgar A. Love. Ben Smith, Bruce Waltzer, Dr. Dombrowski and others are prepared to testify.

"Was, then, the American Revolution effected, was the American Confederacy formed, was the precious blood of thousands spilt, and the hard-earned substance of millions lavished, not that the people of America should enjoy peace, liberty, and safety, but that the government of the individual States . . . might enjoy a certain extent of power and be arrayed with certain dignities and attributes of power? . . . [A]s far as the Sovereignty of the States cannot be reconciled with the happiness of the people, the voice of every good citizen must be, Let the former be sacrificed to the latter." (Emphasis added)."

"States' Rights" are mystical, emotion-laden words. For me, as for most Southerners, the words evoke visions of the hearth and defense of the homeland and carry the sound of trumpets and the beat of drums. But the crowning glory of American federalism is not States' Rights. It is the protection the United States Constitution gives to the private citizen against *all* wrongful governmental invasion of fundamental rights and freedoms.

When the wrongful invasion comes from the State, and especially when the unlawful state action is locally popular or when there is local disapproval of the requirements of federal law, federal courts must expect to bear the primary responsibility for protecting the individual.¹⁰ This

⁹ The Federalist, No. XLV.

¹⁰ "[T]he principal, if not the only, reason for establishment of the lower courts was the need for dealing with local opposition to, or disregard of, the federal law. Unless they perform this function adequately, there is little reason to have them at all. . . . And it is quite clear that the reason Congress was given such power, and presumably the basic reason for the existence of the federal courts which Congress did establish forthwith was the need for national tribunals to enforce the national law in the teeth of local resistance." Lusky, *Racial Discrimination and the Federal Law: A Problem in Nullification*, 63 Col. 1163, 178 (1963). Similarly, Mr. Justice Douglas, who must be in a state of shock at the thought that this Court quoted his opinion in *England v. Louisiana State Board of Medical Examiners*, 32 L.E. 4093, 4096, in support of the result reached here, said in that opinion: "Today we put

responsibility is not new. It did not start with the *School Segregation Cases*. It is close to the heart of the American Federal Union. It is implicit in the replacement of the Articles of Confederation by the Constitution. It makes federalism workable.

The distinguishing feature of this case, which the majority chooses to ignore, is the contention that the State, under the guise of combatting subversion, is in fact using and abusing its laws to punish the plaintiffs for their advocacy of civil rights for Negroes. It so happens that the plain-[fol. 102] tiffs contend that the Louisiana Anti-Subversion Law is unconstitutional and, besides, has been superseded by congressional legislation. If those contentions are sound, unquestionably the plaintiffs have a right to relief in the federal court. But the deep thrust of the complaint is the State's abuse of its power as to the plaintiffs. If the evidence on this point should support the plaintiffs, they would be entitled to relief—even if the law were clearly constitutional.

It is true that some law-violators, caught dead to rights, say "You can't do that to me", and shout "Civil Rights" in an effort to escape just punishment. But it is also true,

federal jurisdiction in jeopardy. As the Court says there are many advantages in a federally constructed record. Moreover, federal judges appointed for life are more likely to enforce the constitutional rights of unpopular minorities than elected state judges. . . . The Court recognizes the value to the litigants of being in the federal court. . . . The value of the independence of federal judges, and the value of an escape from local prejudices when fact findings are made are considerable ones." Justice Douglas quoted Madison with regard to the problem when the creation of lower federal courts was being mooted: "What was to be done after improper verdicts, in state tribunals, obtained under the biased directions of a dependent judge, or the local prejudices of an undirected jury? To remand the cause for a new trial would answer no purpose. To order a new trial at the supreme bar would oblige the parties to bring up their witnesses, though ever so distant from the seat of the court. An effective judiciary establishment, commensurate to the legislative authority, was essential. A government without a proper executive authority, was essential. A government without a proper executive and judiciary would be the mere trunk of a body, without arms or legs to act or move." 5 Elliott's Debates (Lipp. ed. 1941), p. 159.

and every judge in this circuit knows it, that in some cases, all too many cases, persons have been punished without any justifiable basis or punished cruelly beyond the bounds of just punishment for a minor offense, to serve as an object lesson to others, because they opposed the State's policy of segregation.¹¹ The plaintiffs assert that this is such a case. There is, therefore, no substance to the majority's argument that the federal court is here being asked to interfere with orderly state criminal processes, and that if the Court granted relief it would be a precedent for interfering *every* time a criminal defendant protested that his constitutional rights were invaded. The processes under attack in this case are, allegedly, not the State's usual, orderly, impersonal, legislative and criminal processes.

This is a civil action which was brought *before* any criminal proceeding was begun in the state courts. There is therefore no unseemly clash of courts and no question of Section 2283 of the Judicial Code barring relief.¹² Assuming the truth of the complaint, as the Court *had* to do in order to dismiss the suit, the case is a classic example for

¹¹ On World-Wide Communion Sunday in October 1963 three young women, two of whom were Negroes, were arrested for attempting to attend religious services at a Methodist Church in Jackson, Mississippi. They got only as far as the church steps when they were told that they were not welcome. A policeman gave them two minutes to move on. As they started to walk away he told them that they had taken too long. He arrested them. They were indicted for violating Section 2090 (trespass) and Section 2406 (disturbing worship) of the Code of Mississippi. The Police Justice's Court of Jackson sentenced them to a year's imprisonment and fined each \$1,000. They removed the case to the Federal District Court for the Southern District of Mississippi on the ground that their civil rights were violated. The district judge remanded the action back to the State Court. *Poole v. City of Jackson*, 5 Cir. 1964, No. 21058, pending on appeal on the right to appeal.

¹² *Ex parte Young*, 209 U. S. 123 (1908); *Traux v. Raich*, 239 U. S. 33 (1915); *Looney v. Eastern Texas R.R.*, 247 U. S. 214 (1918); *American Houses v. Schneider*, 211 F.2d 881 (3rd Cir. 1954); *Hart & Wechsler, The Federal Courts and the Federal System* 847 (1953) Note, *Enjoining State Court Proceedings*, 74 *Harv. L. Rev.* 726, 729 (1961).

raising the shield of the Constitution in protection of a [fol. 103] citizen's constitutional rights. Congress recognized the problem in federal-state relations now before us and in the Civil Rights Act expressly authorized citizens to protect their constitutional rights by suing in the federal court.

If the Louisiana Anti-Subversion Law is invalid on its face or invalid as applied to the plaintiffs, they should not be subjected to the public indignity of prosecution, the paralysis of earning ability while their case is pending, and a long, expensive appeal through the state courts to the United States Supreme Court. These are foreseeable and inevitable consequences of unlawful State action of the kind alleged here. Win, lose, or draw in the court of last resort—the individual citizen is a heavy loser when the State abuses its legislative power and criminal processes. The only adequate remedy is for the federal district court to stop the State at the start of its abuse of its governmental power. Whether the State is misusing its power can be determined only after a fair and full hearing. The logical forum for that determination is a federal tribunal.

This Court has jurisdiction. And as a three-judge Court it was instituted for just such a case. It should face up to the responsibilities incident to jurisdiction and to doing the job it was designed to do. Much as I regret to say it, and, of course, I mean no personal reflection on my colleagues, whom I esteem highly, I consider that this Court's refusal to pass on the constitutional issues and to give the plaintiffs a day in court is an indefensible denial of due process.

I turn now to a more detailed analysis of what the case is all about and how the Court has failed to meet its obligations as a federal district court.

[fol. 104]

I.

Is the law unconstitutional on its face?

A. The plaintiffs make two major contentions with respect to the *per se* unconstitutionality of the Louisiana Anti-Subversion Law. First, they contend that the statute violates the freedoms of speech, assembly, and association

guaranteed by the First and Fourteenth Amendments. Second, they contend that the law is so vague and indefinite and completely without standards that it violates due process and constitutes an unlawful delegation of legislative power.

B. This Court held a long and formal hearing for the sole purpose of deciding the *per se* validity of the law. At the end of the hearing the majority declared the law constitutional on its face. The Court has now reversed itself and, on the assumption that the plaintiffs will be prosecuted, shifted to the state courts responsibility for deciding the federal questions. *The majority opinion does not discuss any of the substantial constitutional issues the complaint raises.*

C. I shall not deal at length with the constitutional arguments, because of the Court's decision to finesse the subject.

Basically, everyone recognizes that the general scope of the statute is within the State's constitutional authority. The difficulty comes from the unlimited commands the statute imposes which conflict with individual rights of free speech and association. See *Gibson v. Florida Committee*, 1963, 372 U. S. 539, — S.Ct. —, L.Ed. 2d —. One example will suffice to show the overbreadth of the statutory language. Section 359(2) defines "communist party" so as to include "any organization which in any manner advocates or acts to further the success of the program of world domination of the international communist conspiracy [fol. 105] acy." This Court knows from other litigation, particularly *United States v. Louisiana*, E.D. La., Civil Action No. 2548, that the Louisiana legislature regards the movement to increase Negro voting in the State as part of the Communist conspiracy.¹³ All of the organizations pro-

¹³ The "Key to Victory, A Manual of Procedure for Registrars of Voters, Police Jurors and Citizens" is a pamphlet prepared by State Senator William M. Rainach and William M. Shaw. Senator Rainach was the first Chairman of Louisiana Joint Legislative Committee to maintain segregation and Mr. Shaw was the first

moting increased Negro voting registration therefore fall within the definition of "communist party", and any member could be prosecuted under the Louisiana Anti-Subversion Law. The Supreme Court's words in *NAACP v. Button* are apt here:

"It makes no difference whether such prosecutions or proceedings would actually be commenced. It is enough that a vague and broad statute lends itself to selective enforcement against unpopular causes. We cannot close our eyes to the fact that the militant Negro civil rights movement has engendered the intense resentment and opposition of the politically dominant white community of Virginia; litigation assisted by the NAACP has been bitterly fought. In such circumstances, a statute broadly curtailing group activity leading to litigation may easily become a weapon of oppression, however evenhanded its terms appear. Its mere existence could well freeze out of existence all such activity on behalf of the civil rights of Negro citizens." *NAACP v. Button*, —, 371 U. S. 415; 83 S. Ct. 328, — L.Ed. —.

In the same case the Supreme Court also said:

"The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchallenged delegation of legislative powers, but upon the danger of tolerating in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application."

"When, as in this case, the claim is made that particular legislative inquiries and demands infringe substantially upon First and Fourteenth Amendment associational rights of individuals, the courts are called upon to, and must, de-

counsel for the Committee. The pamphlet was used to instruct registrars. The pamphlet states and other evidence in the record indicates that "The Communists and the NAACP plan to register and vote every colored person of age in the South."

termine the permissibility of the challenged action." *Gibson v. Florida Committee*, —, 372 U.S. 539. The constitutional attack affects many more sections of the law than those sections for violation of which the plaintiffs have been threatened with prosecution. The Court completely disregards this fact. The Court should have weighed the [fol. 106] statute in the light of federal standards and decided constitutionality one way or the other. I would hold that some of the provisions of the law are unconstitutional on their face.

II.

Is the law unconstitutional as applied?

A. The intervenors, two practicing lawyers in New Orleans, have been active in civil rights cases, representing Negroes in many desegregation cases and representing the American Civil Liberties Union in all sorts of cases. They were arrested. At gunpoint their homes and offices were raided and ransacked by police officers and trustees from the House of Detention acting under the direct supervision of the staff director and the counsel for the State Un-American Activities Committee. The home and office of the director of Southern Conference Educational Fund were also raided. Among the dangerous articles removed was Thoreau's Journal. A truckload of files, membership lists, subscription lists to SCEF's newspaper, correspondence, and records were removed from SCEF's office, destroying its capacity to function. At the time of the arrests, Mr. Pfister, Chairman of the Committee, announced to the press that the raids and arrests resulted from "racial agitation". An able, experienced, and independent-minded district judge of the Criminal District Court for the Parish of Orleans, after hearing evidence, discharged the plaintiffs from arrest on grounds that the arrest warrants were improvidently issued and that there was no reasonable cause for the arrests. Shortly thereafter, the Board of Governors of Louisiana State Bar Association adopted a resolution stating, in part:

"The bar has a responsibility for safeguarding the principles which guarantee due process, and it is a [fol. 107] deep concern where procedural or substantive aspects of search and seizure harass a member of the bar in the proper exercise of his duties.

"Search and seizure of a file in a lawyer's office, unless due process has been adhered to in the strictest sense, is abhorred since such procedure endangers the exercise of constitutional rights of every lawyer and particularly the rights of the client who has placed his trust in him.

"Specifically, this board would urge that police actions by any arm of government scrupulously conform to the best traditions of justice, which guarantee due process to every citizen." New Orleans Times-Picayune, January 3, 1964.

One of the intervenors is an officer of SCEF. The other lawyer is not even a member; he is threatened with prosecution for failing to register as a member of the National Lawyers' Guild.

The plaintiffs say that the purpose of the Southern Conference Educational Fund is to improve economic, social, and cultural standards in the South in accordance with the highest American institutions and ideals. Its principal activity is to promote civil rights for Negroes by education, correspondence, and publication of a newspaper. The plaintiffs deny any connection with communism or subversion.

As emphasized earlier, the plaintiffs contend that, even if the law is valid on its face, the State has searched their homes and offices, seized their property, arrested them, and is about to prosecute them not because they are Communists—they deny any connection with communism—but because their thinking is not compatible with the State's segregation policy. The plaintiffs offer proof in the form of affidavits and witnesses willing to testify.

B. Here again the Court reversed itself. At the first hearing the Court agreed unanimously to receive the evidence at a second hearing. This makes sense. There is no [fol. 108] way of deciding whether a law is applied uncon-

stitutionally without hearing evidence as to its application. Evidence was also admissible to show the purpose, operation, and effect of the law. Now, however, the majority has refused to allow the plaintiffs to prove their case by affidavit or by witnesses.

The technical basis for the majority decision was its sustaining of the defendants' motion to dismiss on the ground that "the complaint failed to state a claim upon which relief can be granted". This motion, of course, requires the Court to accept as true all of the allegations in the complaint. In effect the Court held that a citizen has no cause or right of action against the State, to defend federally guaranteed rights and freedoms, when *admittedly* the State is using its Anti-Subversion Law against him, not because he is subversive, but because he advocates civil rights for Negroes. The Court never got around to stating just why the complaint is defective. The fact that the suit is against the State and its officers might affect judicial discretion to withhold the relief prayed for, but it does not affect the plaintiffs' right or cause of action.

Apparently uneasy because of its change of heart and desperately searching for an argument, any argument, the Court came up with a quiddity in keeping with its ratiocinations:

"This court will not gainsay the rule that evidence has been frequently admitted to show unconstitutional application of statutes; . . . but here the very vitals of our constitutional system of government are on the line. . . . If plaintiffs are permitted to introduce evidence . . . respondents would certainly be entitled to follow with evidence. . . . In effect, these litigants, plaintiffs, defendants and intervenors, would indulge in a Star Chamber proceeding with all the 'foldorol' and publicity attendant therewith."

C. Disregarding the Star Chamber's "foldorol" and publicity, I understand the Court concedes that in some cases evidence has been admitted to show an unconstitutional ap-
[fol. 109] plication of a valid law, but holds that in this case evidence should not be admitted because: (1) the

"vitals" of our Constitution are on the line; (2) the plaintiffs should not be allowed to introduce evidence, for that would entitle the defendants to introduce evidence; (3) a hearing should not be public, or at any rate, a hearing should not be held if there is a likelihood of considerable publicity. This rationale illustrates what I mean by the suggestion, respectfully tendered, that perhaps the decision is the result of a visceral reaction.

In an analogous case, a different panel of this Court held that a section of this very law now before us was unconstitutional as it was applied to the National Association for Advancement of Colored People. *State v. NAACP*, E.D.La., 1960, 181 F. Supp. 37, *aff'd* 366 U. S. 293. "[T]he constitutionality of a statute, valid on its face, may be assailed by proof of facts tending to show that the statute as applied to a particular article [or person] is without reason. . . . *United States v. Caroline Products Co.*, 1938, 304 U. S. 144, 58 S. Ct. 778, 82 L. Ed. 1234." As Mr. Justice Holmes has said, "[T]he determination as to [the plaintiffs'] rights turns almost wholly upon the facts to be found. . . . All their constitutional rights, we repeat, depend upon what the facts are found to be. . . . They are not to be forbidden to try those facts before a court of their own choosing, if otherwise competent." *Pren-tis v. Atlantic Coast Line Co.*, 1908, 211 U. S. 210, 29 S. Ct. 67, 53 L. Ed. 150.

All I know about the plaintiffs is what I have read about them in the pleadings and in their written offer of proof. Perhaps the plaintiffs are Communists or subversive; perhaps not. Perhaps the State is being falsely accused; perhaps not. I know this, however: the plaintiffs have a right [fol. 110] to sue in the federal district court and fair play entitles them to a day in court to make their proof.

III.

Has the Louisiana Anti-Subversion Law been superseded by congressional laws on the subject?

A. The plaintiffs say that, judging by the criteria established in *Pennsylvania v. Nelson*, 1956, 350 U. S. 497, 76

S. Ct. 477, 100 L. Ed. 640, Congress has superseded the Louisiana law through enactment of the Smith Act of 1940, as amended in 1948, 18 U.S.C. 2385, the Internal Security Act of 1950, 50 U.S.C. 761 et seq., and the Communist Control Act of 1954, 50 U.S.C. 841. *Nelson* established three tests to show congressional intention to supersede state laws on subversion. Applying these tests to this case, the plaintiffs contend, first, that Congress has evidenced this intention by a pervasive, all-embracing program of regulation; second, that the Louisiana law is on a subject in which the national interest is so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject; third, that enforcement of the state law presents a serious conflict with the federal program.

B. The majority opinion discusses this contention at length although, to have been consistent with its refusal to decide constitutionality, the Court should have refused to discuss supersession. There is no less, and no more, reason to decide one than the other. The Court never comes to grips with the tests *Nelson* establishes. Instead, the Court simply relies on *Uphaus v. Wyman*, 1959, 360 U. S. 72, 79 S. Ct. 1040, 3 L.Ed.2d 1090, in which the Supreme Court stated that *Nelson* does not prohibit prosecution for sedition against the State itself or prevent the State from pro-[fol. 111] tecting itself from sabotage or attempted violence.

C. *Uphaus*, if I may say so, is of small help in our national efforts against Communism but it offers great prospects for disguising unlawful state action against federally protected rights. Nevertheless, the decision may be read as a logical and proper limitation on *Nelson* when the individuals prosecuted have in fact directed their activities against the State (not against the Nation), as in such incidents as riots, malicious mischief, criminal anarchism, or a conspiracy to dynamite the State house. Thus, there is no question as to the validity of the State Criminal Anarchy Law, La. R.S. 14:115. And the Louisiana Supreme Court very properly held that *Nelson* did not foreclose a prosecution under that statute "which does not necessarily involve seditious acts against the federal government". State

v. Cade, 1963, 244 La. 534, 135 So.2d 382. In the same decision, however, the Louisiana Supreme Court reaffirmed its holding in *State v. Jenkins*, 1958, 236 La. 300, 107 So.2d 648.

In the *Jenkins* case the defendant was charged in a bill of information with violating an earlier version of the statute before this Court. The defendant was charged with being a member of the Communist Party knowing it to be a foreign subversive organization as defined in Section 366 of the statute. The prosecution argued that *Nelson* merely foreclosed acts of sedition against the United States alone. The Louisiana Supreme Court rejected the prosecution's position:

"This contention cannot be sustained. A reading of the majority opinion in the *Nelson* case leaves no doubt that the ruling covers the entire area of communist activity, since communism in any form, even though directed against a local government, necessarily violates the Smith Act. Thus, in the case at bar, the charge that the accused has been guilty of subversive activity, in that she was a member of the Communist Party, in its essence includes seditious acts against the government of the United States (even though such violation had not been specifically alleged), for [fol.112] our Communist Control Law (R.S. 14:358-365) like the Federal Communist Control Act, 50 U.S.C. §841 et seq., contains legislative declarations of fact that the Communist Party is dedicated to the overthrow of all organized government."

Uphaus upheld a contempt conviction of a witness for failure to produce a list of guests at a public summer camp suspected of being a communist front. The New Hampshire legislature had authorized the state attorney general to investigate the extent of subversive activities in the state. As the Supreme Court noted in *Gibson v. Florida Committee*: "[T]he claim to associational privacy in *Uphaus* was held to be 'tenuous at best', 360 U. S. at 80, since the disputed list was already a matter of public record by virtue of a generally applicable New Hampshire law requiring that places of accommodation, including the camp in question,

maintain a guest register open to public authorities. Thus, this Court noted that the registration statute 'made public at the inception the association they [the guests] now wish to keep private'. 360 U. S. at 81". 373 U. S. at 54.

I have no doubt of the validity of a state legislative investigation into the extent of communist or subversive activities within the state, provided that it is conducted with proper constitutional safeguards and does not impinge on areas preempted by Congress. Whether subversive persons are within a state, whether their activities constitute a threat to the state, and what kind of a threat are of proper concern to a State. Information relative to the subject is necessary for the State "to operate in areas not reached by federal authority". *Texas v. Southeast Texas Chapter*, —, 358 S.W.2d 711. Thus *Uphaus* has been held to sanction state legislative inquiries into such local matters as the qualifications and fitness of the state's employees. *Baggett v. Bullett*, W.D.Wash. 1963, 215 F. Supp. [fol. 113] 439, 448, app. pending. Here the legislation and the State's acts against the plaintiffs go much further than New Hampshire's investigation in *Uphaus*.

The Louisiana Anti-Subversion Law, unlike the Criminal Anarchy Law, is directed at the same conduct proscribed by Congress. This is evident from the language of the statute. Thus, Section 358 states that the purpose of the legislation is to seek to meet problems created by the "world Communist movement". The preamble declares that "there exists a world Communist movement, directed by the Union of Soviet Socialist Republics and its satellites which has as its objective world control." After describing in some detail the conduct of this "world Communist movement", the law states that "the world Communist movement constitutes a clear and present danger to the citizens of the State of Louisiana. The public good and the general welfare of the citizens of the state require the immediate enactment of this measure." This is precisely the "conduct" which Congress has proscribed in the federal legislation. The preamble to the Internal Security Act, Title 50 § 781, in almost the identical language utilized by the Louisiana legislature, states that the purpose of the federal legislature is likewise

to meet the problem of "conduct" engendered by the "world Communist movement".

In Section 358 the legislature explains the state's concern with the conduct proscribed: "Since the State of Louisiana is the location of many of the nation's most vital military establishments, and since it is a producer of many of the most essential products for national defense, the State of Louisiana is a most probable target for those who seek by force and violence to overthrow constitutional government, and is in immediate danger of Communist espionage, infiltration and sabotage." Thus the legislature's concern is with threats to the national interest and national security, with problems relating to the national defense and, indeed, with international relations.

In the years following the *Nelson* decision not a single state court criminal prosecution for alleged Communist activity has been sustained. See, for example, *Commonwealth v. Gilbert*, 1956, 334 Mass. 71, 134 N.E.2d 13; *Braden v. Commonwealth*, 1953, 291 S.W.2d 843 (Kentucky); *Commonwealth v. Hood*, 1956, 334 Mass. 76, 134 N.E.2d 12; *Commonwealth v. Dolsen*, 1957, 183 Pa. Sup. 339, 132 A.2d 692. These cases dealt with attempted enforcement of state sedition acts based upon charges that the defendants were engaged in communist activities or were members of communist organizations. Even where the charge was carefully couched in terms of sedition against the state itself, in applying the doctrines enunciated in *Nelson* the state courts uniformly held that charges of communist activity of necessity involved conduct proscribed by the federal legislation. For example, the Supreme Court of Massachusetts, in *Commonwealth v. Gilbert*, pointed out:

"Although these things . . . are specified as pertaining to the overthrow of the government of this Commonwealth, it is evident that they are the familiar paraphernalia of communist agitation for the overthrow of government in general, and cannot be directed separately and exclusively against the government of this Commonwealth."

These cases all dealt with criminal prosecutions under state sedition laws. However, the Supreme Court of Michi-

gan, in *Albertson v. Millard*, 1956, 345 Mich. 519, 77 N.W.2d 104, faced directly the impact of the preemption doctrine upon a state law similar to the Louisiana law before this Court. Following the passage of the federal Internal Security Act several states enacted so-called "Little McCarran Acts", principally among them Alabama, Louisiana, Michigan and Texas. These statutes are attempts to cover [fol. 115] the areas governed by the Internal Security Act of 1950 and the Communist Control Act of 1954.

In *Albertson*, the Michigan Supreme Court struck down the Michigan Act on the ground that it was superseded by the existing federal legislation. The Court held that:

"It is not necessary here to indulge in any extended or lengthy detailed comparison of the specific provisions of the Trucks Act with those of the Pennsylvania Act which the United States Supreme Court struck down in its entirety. No question has been raised here pointing to any substantial difference between the two."

Accordingly the Court ruled that:

"The Congress of the United States has occupied the field entered by the Trucks Act to the extent that the federal act superseded the enforceability by the state of the provisions of said act."

In describing the impact of the Michigan decision upon the Alabama, Louisiana and Texas statutes, a recent commentator has written:

"These statutes provide for registration of communist and subversive organizations, set out penalties for sabotage, and impose various disabilities upon registrants, such as exclusion from the ballot and from public office. Other states require registration but do not impose disabilities upon registrants. It is probable that most of the provisions of these statutes have been superseded by federal legislation. The registration statutes duplicate and enlarge the federal registration scheme. Nearly all of them differ from the federal scheme in one or more respects. Some are accompanied

by provisions outlawing the Communist Party. Because of the probable conflict of provisions, there is a much clearer case for preemption with reference to these statutes than there is with respect to the sedition statutes invalidated by the *Nelson* case. *Hines v. Davidowitz*, in which the Federal Alien Registration Act of 1940 was held to supersede a Pennsylvania alien registration statute, provides a close analogy. Moreover, the breadth and thoroughness of the federal scheme make it easier to infer a preemptive intent on the part of Congress. It is not surprising that the Michigan Supreme Court in *Albertson v. Attorney General* held that Michigan's comprehensive communist control law had been superseded by the similar provisions of federal communist control measures." *Cramton, Supreme Court and State Power to Deal with Subversion and Loyalty*, 43 Minn. L. R. 1025, 1034.

The possibility of subversive activities affecting a state [fol. 116] directly provides a basis for *bona fide* investigation and state legislation. But prosecutions for sedition based on an accused being a communist or a member of a communist front organization have been preempted by Congress. The scheme of federal regulation of Communist activities is so pervasive, the national interest so dominant, and the possibility of federal-state conflict so great that "the conclusion is inescapable that Congress has intended to occupy [this] field of sedition." *Commonwealth v. Nelson*, at page 504. *Uphaus* reaffirmed *Nelson*; it did not overrule *Nelson*. As long as *Nelson* stands, a State may not define as a crime the same conduct Congress proscribes, even though the State's indictment is limited to sedition against the State. There is no doubt as to the intent of the Louisiana legislature: In Section 390 the legislature explains that the statute was necessary because "the federal legislation on this subject is either inadequate in its scope or not being effectively enforced".

IV.

Should the Court proceed with the trial of this case and, on a proper showing, enjoin enforcement of the law?

A. The plaintiffs contend that since the law is unconstitutional as written and applied, that a federal district court has the power to proceed with the trial and, on a proper showing, should enjoin the enforcement of the law. The enforcement of the law, they contend, threatens immediate and irreparable injury to their federally protected constitutional rights. The same argument would apply if the Court should hold that congressional legislation superseded the Louisiana Anti-Subversion Law.

B. The Court's position is unclear. The majority opinion states that the "instant case postulates the basic constitutional issue whether prosecution in the state courts [fol. 117] . . . may properly be blocked and effectively thwarted by Federal action". But this is not a constitutional question at all. There is not the slightest doubt as to the constitutional power of a federal court to block prosecution in a state court under an unconstitutional statute. We need look only to the Supremacy Clause to resolve any doubt. And Congress set up the three-judge court for the precise purpose of passing on whether a federal district court *should* enjoin enforcement of a state law. Moreover, whether the state law is a civil or criminal statute is immaterial in terms of constitutionality.

As emphasized, a basic error in the Court's decision is its failure to distinguish between the type of case now before it and the run of the mine suit by a criminal offender asking for relief against unlawful State action. In the Civil Rights Act Congress established a distinct federal cause of action in favor of those whose constitutional rights have been invaded. 42 U.S.C.A. 1981, 1983, 1985. As a matter of law, since such cases involve a federal question, the right existed anyway. The fact that such cases involve a dispute over federally protected freedoms makes the federal court the appropriate forum for settlement of the dispute.

Assuming some latitude for decision under the doctrine of abstention, now developing as nicely as if Dr. Frankenstein were in charge of it, there is still not enough latitude in the doctrine to justify abstention in this case. It is true that generally speaking federal courts are loath to intervene in orderly criminal processes of a State. They do so only in exceptional cases. But here, allegedly, instead of proceeding in an orderly and regular manner, the complaint charges that the State is subverting its Anti-Subversion Law by using it to punish advocates of civil rights.

[fol. 118] Exceptional as this situation should be, there are enough cases now, I believe, for one to state that in this circuit our courts have established the following principle:

Federal courts are slow in interfering with criminal proceedings in the ordinary case; for example, to take an obvious case, when a defendant argues that state proceedings should be halted while the federal court considers the validity of a search and seizure. But when the complaint alleges that a man is about to suffer irreparable injury from the State for asserting his basic constitutional rights, federal courts are under a duty to hold a hearing on the complaint and to decide the issues. If the state law is unconstitutional as written or applied, or has been superseded by congressional legislation, the Court should enjoin the enforcement of the law, whether the statute is of a civil or a criminal nature.

C. (1) The landmark authority on the power of a federal court to enjoin state enforcement of a law impairing a federal protected right is *Ex Parte Young*, 1908, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714, although recognition of such constitutional power goes back at least to *Osborn v. Bank of the United States*, 1824, 9 Wheat. 738, 6 L. Ed. 204. In *Ex Parte Young* the Supreme Court said:

"[I]ndividuals who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence proceedings, *either of a civil or criminal nature*, to enforce against parties affected an unconstitu-

tional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action."

As noted in a recent treatise, "The effect of *Ex parte Young* is . . . to subject the states to the restrictions of the United States Constitution which they might otherwise be able safely to ignore. . . . [I]n perspective the doctrine of *Ex parte Young* seems indispensable to the establishment of constitutional government and the rule of law." Wright, *Federal Courts* § 48 (1963).

Jordan v. Hutcheson, 4 Cir. 1963, 323 F. 2d 597 is instructive here. In that case three Negro attorneys sued a committee of the Virginia State Legislature, its Chairman, counsel, and a process server of the City of Norfolk. The complaint alleged that under the guise of conducting lawful investigations but actually for the purpose of discouraging Negroes from asserting their civil rights in the courts, the defendants harassed and attempted to intimidate the plaintiffs, raided their offices, and published statements (as in the instant case) naming the plaintiffs as law violators. In a thorough, carefully documented opinion, which relies on a great many decisions of this circuit, the Fourth Circuit reversed the district court which had held that the complaint failed to state a cause of action. Judge Bell, for a unanimous court, said:

"The extent to which the state through its legislative power may intrude upon a citizen's rights becomes a matter for the consideration of the federal courts when such conduct invades the citizen's constitutional privileges. Whereupon the federal courts are commanded to act under the self-executing provisions of the Fourteenth Amendment. We submit it would be impracticable to test the constitutionality of the state's conduct without considering its purpose. . . . *The concept of federalism: i.e., federal respect for state institutions, will not be permitted to shield an invasion of the citizen's constitutional rights.* *Baker v. Carr*, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962). Certainly this principle has not shielded the activities of the executive and judicial branches of the state from inter-

diction when constitutional rights are involved. . . . Although the federal courts will recognize and respect the state's right to exercise through its legislature broad investigatory powers, nevertheless these powers are not unlimited and it remains the duty of the federal courts to protect the individual's constitutional rights from invasion either by state action or under color thereof. *Especially is this true in the sensitive areas of First Amendment rights and racial discrimination.* Where there exists the clear possibility of an immediate and irreparable injury to such rights by state legislative action the federal courts have exercised their equitable powers including the declaratory judgment and the injunction." (Emphasis added.)

(2) Courts in this circuit have repeatedly enjoined the enforcement of state laws where enforcement infringed on [fol. 120] federal rights. They have done so when the statute was unconstitutional on its face and when it was unconstitutional as applied. They have issued the injunction both before and after criminal prosecutions have been started.

In a strikingly analogous situation, in *Bush v. Orleans Parish School Board*, E. D. La. 1961, 194 F. Supp. 182, *aff'd* — U.S. —, a three-judge court, met directly the question of enjoining state court criminal proceedings and the enforcement of criminal statutes. Louisiana had enacted certain criminal laws designed in their operation, *but not on their face*, to deter Negro citizens from exercising their right to insist upon the desegregation of public education. The statutes created a new crime, "bribery of parents of children", and a companion crime, "intimidation and interference in the operation of schools". As in the instant case, the Attorney General of the State argued that Section 2283 and the policy of comity prohibited the federal court from enjoining these criminal prosecutions. The Court, enjoining a large number of state officers from the Governor on down, said:

"True, 'it is a familiar rule that courts of equity do not ordinarily restrain criminal prosecution' *Douglas v. Jeannette* . . . But this rule cannot be applied mechan-

ically. *NAACP v. Bennett*, cf. *Doud v. Hodge*, 350 U. S. 485. Special circumstances will sometimes compel a federal court to act. *Truax v. Reich* 239 U. S. 33; *Pierce v. Society* 268 U. S. 510; *Hague v. CIO* 307 U. S. 496. . . . This is such a case. . . . The challenged statutes are not ordinary criminal provisions. . . . Placed in context, their mission is all too clear. These are the invidious weapons of a state administration dedicated to scuttling the modest program of desegregation which has been initiated in Orleans Parish. . . . Constitutionally unable to require racial segregation in the public schools, arrested in its plan to close the integrated schools, and unsuccessful in its boycott of these schools by other means, the State has now marshalled the full force of its criminal law to enforce its social philosophy through the policeman's club." 194 F. Supp. at 185

[fol.121] In the most recent decision in point, *Aelony v. Pace*, Slip Opinion, Nov. 1, 1963, 32 L. W. 2215, Judge

[fol. 121] In the most recent decision in point, *Aelony v. Tuttle*, for a three-judge court held that a Georgia "insurrection statute" and an "unlawful assembly statute" were unconstitutional and granted an injunction forbidding prosecution of the plaintiffs under these laws. I point out that a state "insurrection" statute is preeminently a law enabling a State to protect itself against what the majority here calls the State's "basic right of self-preservation".

Browder v. Gayle, M. D. Ala. 1956, 142 F. Supp. 707, *aff'd per curiam* 352 U. S. 903, is a leading case. Judge Rives, for the Court, held:

"The defendants, . . . [urge that] the Federal court . . . should, in its discretion as a court of equity, and for reasons of comity, decline to exercise such jurisdiction until the State courts have ruled on the construction and validity of the statutes and ordinances. The short answer is, that doctrine has no application where the plaintiffs complain that they are being deprived of constitutional civil rights, for the protection of which the Federal Courts have a responsibility as heavy as that which rests on the State courts."

Discussing *Browder v. Gayle* a panel of the Fifth Circuit (Chief Judge Hutcheson and Judges Tuttle and Jones) said, in a *per curiam* opinion:

"That case disposes of the contention that the federal court should not grant an injunction against the application or enforcement of a state statute, the violation of which carries criminal sanctions. This is not such a case as requires the withholding of federal court action for reason of comity, since for the protection of civil rights of the kind asserted Congress has created a separate and distinct federal cause of action. 42 U. S. C. A. § 1983. Whatever may be the rule as to other threatened prosecutions, the Supreme Court in a case presenting an identical factual issue affirmed the judgment of the trial court in the *Browder* case in which the same contention was advanced. *To the extent that this is inconsistent with Douglas v. City of Jeannette, Pa.*, 319 U. S. 157, 63 S. Ct. 877, 87 L. Ed. 1324, we must consider the earlier case modified." *Morrison v. Davis*, 5 Cir. 1958, 252 F. 2d 102, at 103.

[fol. 122] In *United States v. Wood*, 5 Cir. 1961, 295 F. 2d 772 a Registrar of Voters in a Mississippi County where there were no Negroes registered, without provocation, pulled out his revolver and ordered a Negro to leave his office. As he was leaving, the Registrar struck him on the back of his head with the revolver. The Negro had conducted a school for voting registration and had encouraged Negroes to register. He was charged with disturbing the peace. The Court of Appeals for this Circuit enjoined his prosecution not just on the violation of his rights but on the ground that the prosecution, "regardless of outcome, will effectively intimidate Negroes in the exercise of their right to vote". 295 F. 2d at 777. The Court pointed out that the Civil Rights Act, 42 U.S.C.A. 1971 expressly authorized injunctive relief against state criminal court proceedings and thus falls squarely within the stated exception to Section 2283. See also *Cooper v. Hutchinson*, 3 Cir. 1958, 184 F. 2d 119, holding that 42 U.S.C.A. 1983 authorizes an injunction against state court proceedings as an exception to Section 2283.

In *City of Houston v. Dobbs Co.*, 5 Cir. 1956, 232 F. 2d 428, the Court affirmed the granting of permanent injunctive relief against the enforcement of a criminal ordinance of the City of Houston. Judge Tuttle, for the Court, said:

"Appellant attacks the jurisdiction of the Court on the well recognized principle that courts will not normally enjoin the enforcement of criminal statutes or ordinances whose constitutionality is challenged. There is an equally well recognized exception to this rule as stated in the case cited by the appellant in its brief, *Spielman Motor Sales Co. v. Dodge*, 295 U. S. 89 where the Court says, 'to justify such interference there must be exceptional circumstances and a clear showing that an injunction is necessary to afford adequate protection of constitutional rights. The case before us presents a clear illustration of such exceptional circumstances as would make the general rule inapplicable.'"

See also *Denton v. City of Carrollton, Georgia*, 5 Cir. 1956, [fol. 123] 235 F. 2d 481.

Moreover, as the Court held in *Bailey v. Patterson*, 5 Cir. 1963, — F. 2d —, "The law is crystal clear that they were not required to subject themselves to arrest in order to maintain this suit". In *McNeese v. Board of Education*, —, 373 U. S. 668, — S.Ct. —, — L.Ed. —, the Supreme Court reviewed the purposes of Section 1983. The Court found that these were its purposes: to override certain kinds of state laws; to provide a remedy where state law was inadequate; to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice; and to provide a remedy in the federal courts supplementary to any remedy any state might have. The Supreme Court said: "We would defeat those purposes if we held that assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in a state court". 373 U. S. at 672.

3. None of the decisions relied on in the majority opinion, present the all-important issue raised here that the State was subverting its laws in order to maintain its segregation policy.

In *Watson v. Buck*, 1940, 313 U. S. 387, 401, — S.Ct. —, 85 L. Ed. 1416, the Court stated that "exceptional circumstances" and "great and immediate" danger were not shown. *Stefanelli v. Minard*, 1951, 342 U. S. 117, 72 S. Ct. 118, 96 L. Ed. 138, was a run of the mine case in which a defendant asked that a federal court intervene in a state proceeding by suppressing the use of evidence allegedly secured by an unlawful search and seizure. The Court properly refused to interfere, particularly influenced by the consideration that it would be "interven[ing] piecemeal to try collateral issues." 342 U. S. at 123. In *Cleary v. [fol. 124] Bolger*, 1963, 371 U. S. 392, 83 S. Ct. 385, 9 L. Ed. 2d 390, the Court held that federal courts would not enjoin New York police officers from testifying where there was no evidence of an attempt to avoid federal requirements. The majority opinion cites *Douglas v. City of Jeannette, Pa.*, —, 319 U. S. 157, 63 S. Ct. 877, 87 L. Ed. 1324, but as stated in *Morrison v. Davis*, 1958, 252 F. 2d 102, 103, the Fifth Circuit gives that case a narrow reading in civil rights cases.

In short, the many decisions in this circuit in which the Court has firmly grasped the nettle argue strongly against the Court's too tender handling of the case.

V.

Chairman Pfister is quoted as saying that the plaintiffs were racial agitators. If that is true, and if the plaintiffs' modest agitation by mail was motivated only by the plaintiffs' interest in civil rights for Negroes, then, once again, as in *Bush v. Orleans Parish School Board*, the State has "marshalled the full force of its criminal law to enforce its social philosophy through the policeman's club". Under any rational concept of federalism the federal district court has the primary responsibility and the duty to determine whether a state court proceeding is or is not a disguised effort to maintain the State's unyielding policy of segregation at the expense of the individual citizen's federally guaranteed rights and freedoms.

This Court should get on with its work.

[fol. 127] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
Civil Action No. 14,019
Division "B"

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE
EDUCATIONAL FUND, INC., Plaintiffs,

—against—.

JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on UnAmerican Activities of the Louisiana Legislature, RUSSELL R. WILLIE, individually and as Major of the Louisiana State Police Department, JIMMIE H. DAVIS, individually and as Governor of the State of Louisiana, JACK P. F. GREMILLION, individually and as Attorney General of the State of Louisiana, COLONEL THOMAS D. BURBANK, individually and as Commanding Officer of the Division of Louisiana State Police, and JIM GARRISON, individually and as District Attorney for the Parish of Orleans, State of Louisiana, Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed January 31, 1964

I. Notice is hereby given that James A. Dombrowski and the Southern Conference Educational Fund, Inc., the plaintiffs herein, and Benjamin E. Smith and Bruce C. Waltzer, plaintiffs in intervention herein, hereby appeal to the Supreme Court of the United States from the order of this Court denying the motion for an interlocutory injunction, dissolving the temporary restraining order and dismissing the complaint for failure to state a cause of action, as set forth in the minute entry of January 10th, 1964.

This appeal is taken pursuant to 28 U.S.C. 1253.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The verified complaint of plaintiffs Dombrowski and Southern Conference Educational Fund, Inc.
2. The motion for convening of a three-judge court
3. The order convening the three-judge court
4. The petition of intervention and complaint of Benjamin E. Smith and Bruce C. Waltzer.
5. The motion and order granting a temporary restraining order of November 18th and as extended by Circuit Judge John Minor Wisdom.
6. The defendants' Motion to Dismiss.
7. The defendants' Answer to the Complaint.
8. The plaintiffs' Offer of Proof and attached affidavits and exhibits presented to the Court on January 10, 1964.
9. The minute entry of January 10, 1964, denying the motion for interlocutory relief, dissolving the temporary restraining order, and holding the complaint fails to state a cause of action.
10. The majority and dissenting opinions of the District Court Judges and the Circuit Judge, as soon as said opinions are filed.

III. The following questions are presented by this appeal:

1. Whether Louisiana Revised Statutes Title 14, Sections 358 through 374, the Louisiana "Subversive Activities and Communist Control Law" and Louisiana Revised Statutes Title 14, Section 390 through 390.8 the Louisiana "Communist Propaganda Control Law" have been superseded by federal legislation?

2. Whether the above Louisiana state statutes on their face violate the Constitution of the United States and, in particular, the First and Fourteenth Amendments thereto.

3. Whether the above Louisiana statutes as applied to the plaintiffs and intervenors herein violate the Constitution of the United States and, in particular, the First and Fourteenth Amendments thereto.

4. Whether the refusal of the majority of the three-judge district court to allow plaintiffs and intervenors to adduce any evidence as to the constitutionality of the aforesaid statutes, or as to the constitutionality of their application to the plaintiffs and intervenors was in error and [fol. 129] violated plaintiffs' and intervenors' rights to due process of law?

5. Whether the complaint stated a cause of action for relief under the laws and Constitution of the United States, and in particular under the Civil Rights Acts?

6. Whether the District Court had the power to enjoin the threatened state court criminal prosecutions of the plaintiffs and intervenors?

7. Whether 28 U.S.C. 2283 is any bar to the relief sought?

8. Whether the District Court should have granted interlocutory relief to protect fundamental federal rights guaranteed by the Constitution and laws of the United States and, in particular by the Fourteenth Amendment and the Civil Rights Acts from immediate and irreparable injury?

Milton E. Brener

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Attorneys for Intervenors, Hubert, Baldwin & Ziblich, 300 Oil & Gas Building, 1100 Tulane Avenue, New Orleans, Louisiana.

[fol. 130] Certificate of Service (omitted in printing).

[fol. 131] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
Civil Action No. 14,019
Division "B"

JAMES A. DOMBROWSKI, etc., Plaintiffs,
against

JAMES H. PFISTER, etc., Defendants.

AMENDED NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES—Filed February 27, 1964

1. The Notice of Appeal to the Supreme Court of the United States, previously filed herein, in behalf of James A. Dombrowski and the Southern Conference Educational Fund, Inc., plaintiffs, and Benjamin E. Smith and Bruce C. Waltzer, plaintiffs, is hereby amended by deleting therefrom Paragraph I and by substituting therefor the following Paragraph I:

"I. Notice is hereby given that James A. Dombrowski and the Southern Conference Educational Fund, Inc., the plaintiffs herein, and Benjamin E. Smith and Bruce C. Waltzer, plaintiffs in intervention herein, hereby appeal to the Supreme Court of the United States from the order of this Court denying the motion for an interlocutory injunction, dissolving the temporary restraining order and dismissing the complaint for failure to state a cause of action, as set forth in the minute entry of January 10th, 1964, and

the majority opinion and order of the Court entered herein on February 13, 1964.

This appeal is taken pursuant to 28 U.S.C. 1253." [fol. 132] 2. All other provisions of the said Notice of Appeal to remain in full force and effect as set forth herein.

Milton E. Brener

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Certificate of Service (omitted in printing).

[fol. 133] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 134]

SUPREME COURT OF THE UNITED STATES
No. 941—October Term, 1963

JAMES A. DOMBROWSKI, et al., Appellants,

vs.

JAMES H. PFISTER, etc., et al.

ORDER NOTING PROBABLE JURISDICTION—June 15, 1964

Appeal from the United States District Court for the Eastern District of Louisiana.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Black took no part in the consideration or decision of this case.

Office-Supreme Court, U.S.
FILED

MAR 23 1964

Supreme Court of the United States

October Term, 1964

JOHN F. DAVIS, CLERK

No. **52**

**JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE
EDUCATIONAL FUND, INC.,**

Plaintiffs-Appellants,

BENJAMIN E. SMITH and BRUCE WALTZER,

Intervenors-Appellants,

against

**JAMES H. PFISTER, individually and as Chairman of the Joint Legislative
Committee on Un-American Activities of the Louisiana Legislature,
RUSSELL R. WILLIE, individually and as Major of the Louisiana State
Police Department, JIMMIE H. DAVIS, individually and as Governor
of the State of Louisiana, JACK P. F. GREMILLION, individually and
as Attorney General of the State of Louisiana, COLONEL THOMAS
D. BURBANK, individually and as Commanding Officer of the Division
of Louisiana State Police, and JIM GARRISON, individually and as
District Attorney for the Parish of Orleans, State of Louisiana,**

Defendants-Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS
DIVISION**

JURISDICTIONAL STATEMENT

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Lusky, <i>Racial Discrimination and the Federal Law: A Problem in Nullification</i> , 63 Columbia Law Re- view 1163 (Nov. 1963)	14
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Supreme Court of the United States

October Term, 1963

No. _____

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE
EDUCATIONAL FUND, INC.,

Plaintiffs-Appellants,

BENJAMIN E. SMITH AND BRUCE WALTZER,

Intervenors-Appellants,

against

JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, RUSSELL B. WILLIE, individually and as Major of the Louisiana State Police Department, JIMMIE H. DAVIS, individually and as Governor of the State of Louisiana, JACK P. F. GREMILLION, individually and as Attorney General of the State of Louisiana, COLONEL THOMAS D. BURBANK, individually and as Commanding Officer of the Division of Louisiana State Police, and JIM GARRISON, individually and as District Attorney for the Parish of Orleans, State of Louisiana,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

JURISDICTIONAL STATEMENT

A. The Opinions Below.

The majority and dissenting opinions of the three-judge Federal District Court for the Eastern District of Louisiana, New Orleans Division, have not yet been officially

reported. The majority opinion of District Court Judges Frank B. Ellis and Gordon West is set forth in full in Appendix A to this Statement. The dissenting opinion of Circuit Court Judge John Minor Wisdom is set forth in full in Appendix B to this Statement.

B. Statement of the Grounds on Which the Jurisdiction of This Court Is Invoked.

(i) This is an appeal from an opinion and order of a three-judge Federal District Court convened pursuant to Title 28 U. S. C. Sections 2281 and 2284. The appellants instituted a plenary federal action on November 12, 1963 seeking an interlocutory and permanent injunction restraining the enforcement of certain Louisiana State statutes, (see Appendix C) and seeking equitable and declaratory relief pursuant to Title 42, U. S. C. 1983, 1985 to protect federally protected constitutional rights. A three-judge district court was duly convened by the Chief Judge of the Court of Appeals for the Fifth Circuit. A temporary restraining order restraining the defendants from proceeding with the criminal enforcement of the state statutes against the appellants was entered by Circuit Judge Wisdom on November 18, 1963 and was continued by the Court pending the hearings on appellants' motion for interlocutory relief.

On December 9, 1963, the three-judge Court convened and heard argument on the constitutionality of the state statutes on their face. The Court shortly thereafter ordered a hearing on the question as to whether evidence was admissible as to the constitutionality of the state statutes as applied. This hearing was held on January 9th, 1964. At the conclusion of the hearing on whether evidence would be permitted, the majority of the three-judge court announced in an oral ruling from the bench that (1) the statutes were constitutional on their face, and that (2) the complaint failed to state a claim upon which relief

can be granted. Accordingly the majority of the Court set aside and vacated the temporary restraining order previously issued, denied the motion for interlocutory relief, dismissed the complaint and denied a motion for a stay pending appeal to this Court. Circuit Judge Wisdom dissented from each of these rulings.

On February 13, 1964 the majority of the Court filed a written opinion and order which modified and vacated certain of its conclusions of January 9th. (See Appendix A.) In this opinion the majority of the Court vacated by its own motion its finding on January 9th that the state statutes were constitutional on their face. The majority of the Court, however, reaffirmed its prior determination denying the application for injunctive relief and dismissing the suit for failure to state a claim upon which relief can be granted. (Appendix A.) Circuit Judge Wisdom filed separately his opinion dissenting from the rulings of the majority of the Court. (Appendix B.) Circuit Judge Wisdom would find:

(1) that the state statutes involved are in part unconstitutional on their face, in violation of the First and Fourteenth Amendments to the Constitution of the United States;

(2) that the state statutes here involved are superseded by existing federal legislation and their enforcement is accordingly suspended;

(3) that the complaint stated a cause of action for relief and may not be dismissed;

(4) that the refusal to permit the appellants to adduce evidence as to the constitutionality of the statute as applied violated their rights to due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States. The appellants have appealed to this Court from each and every ruling of the majority of the three-judge District Court.

(ii) The judgment and orders sought to be reviewed are the judgment and orders of the majority of the three-judge federal District Court for the Eastern District of Louisiana, New Orleans Division, contained in the minute entry of that Court entered on January 9, 1964, and the order and judgment contained in the opinion of the majority of the three-judge District Court entered and filed on February 13, 1964. This opinion is set forth in full in Appendix A to this Statement. A notice of appeal was duly filed with the Clerk of the United States District Court for the Eastern District of Louisiana, New Orleans Division, on January 31, 1964. An amended notice of appeal to this Court, subsequent to the filing of the February 13 opinion of the majority of the Court, modifying its findings of January 9th, was also duly filed with the Clerk of the United States District Court for the Eastern District of Louisiana, New Orleans Division, on February 25, 1964.

(iii) Jurisdiction of the appeal is conferred on this Court by Title 28 of the United States Code, Section 1253.

(iv) Cases sustaining the jurisdiction of this Court are:

Anderson, et al. v. Martin, No. 51, October Term, 1963, decided January 13, 1964;

Louisiana v. NAACP, 366 U. S. 293;

Kesler v. Department of Public Safety, 369 U. S. 486;

Query v. United States, 316 U. S. 486;

Stratten v. St. Louis, S.W. Railroad Cos., 282 U. S. 10;

Ex Parte Northern Pacific Railway Co., 280 U. S. 142.

(v) The validity of Louisiana Revised Statutes Title 14, Sections 358 through 374, the Louisiana "Subversive Activities and Communist Control Law" and Louisiana Revised Statutes Title 14, Section 390 through 390.8, the Louisiana "Communist Propaganda Control Law" is here involved. The texts of these statutory provisions are set forth in full in Appendix C to this Statement.

C. Questions Presented by the Appeal.

The following questions are presented by this appeal:

(1) Whether Louisiana Revised Statutes Title 14, Sections 358 through 374, the "Subversive Activities and Communist Control Law" and Louisiana Revised Statutes Title 14, Section 390 through 390.8, the Louisiana "Communist Propaganda Control Law", violate on their face the freedoms of speech, press, assembly, association and the right to petition for redress of grievances guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

(2) Whether these state statutes are so vague and indefinite and without adequate standards as to violate on their face the due process clause of the Fourteenth Amendment to the Constitution of the United States, as well as the privilege against self-incrimination.

(3) Whether these state statutes have been superseded by existing federal legislation.

(4) Whether these state statutes as applied to the appellants violate the First and Fourteenth Amendments to the Constitution of the United States.

(5) Whether the refusal to permit appellants to adduce any evidence before the three-judge District Court as to the constitutionality of the state statutes drawn in question or as to the constitutionality of their application to the appellants violated appellants' right to due process of law.

(6) Whether a complaint states a cause of action for relief under the Constitution and laws of the United States where a complaint alleges that the plaintiffs are threatened with irreparable injury to fundamental federally protected constitutional rights resulting from the imminent enforcement of unconstitutional state statutes.

(7) Whether a complaint which charges that officials of the State of Louisiana under the guise of combatting

subversion are, in fact, using its laws for the sole purpose of punishing citizens for their advocacy of civil rights for Negro citizens and intimidating them and others from exercising federal rights under the first Amendment to achieve the equality guaranteed by the Fourteenth Amendment, states a cause of action for relief under the Constitution and laws of the United States?

(8) Whether the District Court had power to enjoin threatened state court criminal prosecutions of the appellants in order to protect fundamental federal rights guaranteed by the Constitution and laws of the United States from immediate and irreparable injury.

D. Statement of the Facts of the Case.

There is no dispute as to the material facts of this case. Both the majority of the three-judge court and Circuit Judge Wisdom dissenting, accept as true for the purposes of this proceeding all the allegations in the complaint.

The facts material to the consideration of the questions presented are set forth in both the majority and dissenting opinions. They are as follows:

The plaintiff-appellant Southern Conference Educational Fund, Inc. is an association whose purpose for many years has been to seek to improve economic, social and cultural standards in the South in accordance with the highest American institutions and ideals. Its principal activity has been to promote civil rights for Negro citizens by education, correspondence and the publication of a newspaper. Plaintiff-appellant James A. Dombrowski is the executive director of the Fund (Appendix B at p. 25a) and possesses a Doctor of Philosophy degree from Union Theological Seminary.

The two appellant-intervenors, Benjamin Smith and Bruce Waltzer are practicing lawyers in New Orleans,

Louisiana. They have been active in civil rights cases, representing Negroes in many desegregation cases. They have represented the American Civil Liberties Union in the State of Louisiana in many cases (Appendix B at p. 23a). Intervenor-Appellant Smith is the Treasurer of the Southern Conference Educational Fund. Intervenor Waltzer is his law partner and has no connection with the Fund, other than professional representation.

On October 9th, 1963, during the holding of the first interracial lawyers conference in the recent history of the City of New Orleans the two intervenor-lawyers and Dr. Dombrowski were arrested by police officials on warrants charging violation of the Louisiana anti-subversion laws. Their offices were raided and files and records seized, including legal files. The circumstances of the arrests are concisely set forth in Judge Wisdom's opinion (Appendix B at p. 23a).

"At gunpoint their homes and offices were raided and ransacked by police officers and trustees from the House of Detention acting under the direct supervision of the staff director and the counsel for the State Un-American Activities Committee. The home and office of the director of Southern Conference Educational Fund were also raided. Among the dangerous articles removed was Thoreau's Journal. A truckload of files, membership lists, subscription lists to SCEF's newspaper, correspondence, and records were removed from SCEF's office, destroying its capacity to function. At the time of the arrests, Mr. Pfister, Chairman of the Committee, announced to the press that the raids and arrests resulted from 'racial agitation'. An able, experienced, and independent-minded district judge of the Criminal District Court for the Parish of Orleans, after hearing evidence, discharged the plaintiffs from arrest on grounds that the arrest warrants were improvidently issued and that there was no reasonable cause for the arrests."

Despite the discharge of the plaintiffs by the state court from arrest on the ground that there was no reasonable

cause for the issuance of the warrants Representative Pfister and the Louisiana Un-American Activities Committee nevertheless demanded the immediate criminal enforcement of the so-called state anti-subversion laws against the appellants.

The appellants then turned to the Federal courts for protection against this serious and imminent threat to their fundamental constitutional rights. They sought permanent and interlocutory injunctive relief restraining the enforcement of these state statutes as unconstitutional on their face and as applied, and as superseded by existing federal legislation. They sought permanent and interlocutory relief under Title 42 U. S. C. 1983 and 1985 against a conspiracy under color of state law to deprive them of rights, privileges and immunities guaranteed to them under the Constitution and laws of the United States.

Immediately after the filing and serving of this complaint and the convening of a three-judge District Court pursuant to Title 28 U. S. C. 2281 a grand jury was summoned in the Parish of New Orleans to consider returning indictments against the individual appellants in response to the demands by Representative Pfister for enforcement of the so-called anti-subversion laws. Circuit Court Judge Wisdom thereupon issued a temporary restraining order restraining any prosecutive action against the appellants pending the hearing and determination of the cause by the three-judge court. This restraining order was in effect until its dissolution by the majority of the court on January 9th, 1964, Judge Wisdom dissenting.

The complaint charged and the appellants sought to prove by affidavits and in a written offer of proof that the threatened enforcement of these state laws is in every respect an attempt to enforce Louisiana's policy of racial segregation. The appellants asserted and offered to prove that the arrests, the raids, the seizure of books, files, membership lists and the threatened imprisonment of the appellants is a conscious effort to frighten, intimidate and

deter the appellants and thousands upon thousands of Negro citizens of Louisiana and those white citizens courageous enough to support them, from challenging the denial by the State of equality under the law to its Negro citizens.

Circuit Judge Wisdom summarized sharply the factual thrust of the complaint:

"The distinguishing feature of this case, which the majority chooses to ignore, is the contention that the State, under the guise of combatting subversion, is in fact using and abusing its laws to punish the plaintiffs for their advocacy of civil rights for Negroes. It so happens that the plaintiffs contend that the Louisiana Anti-Subversion Law is unconstitutional and, besides, has been superseded by congressional legislation. If those contentions are sound, unquestionably the plaintiffs have a right to relief in the federal court. But the deep thrust of the complaint is the State's abuse of its power as to the plaintiffs. If the evidence on this point should support the plaintiffs, they would be entitled to relief—even if the law were clearly constitutional".

And in the same context Judge Wisdom characterized appellant's offer of proof to support the complaint:

"As emphasized earlier, the plaintiffs contend that, even if the law is valid on its face, the State has searched their homes and offices, seized their property, arrested them, and is about to prosecute them not because they are Communists—they deny any connection with communism—but because their thinking is not compatible with the State's segregation policy. The plaintiffs offer proof in the form of affidavits and witnesses willing to testify".

The majority of the Court refused to hear any evidence, declined to act on the constitutional issues presented under the assumption that the complaint failed to state a cause of action for relief, and totally abdicated any federal

responsibility resting upon what Circuit Judge Wisdom characterizes as "a sort of visceral feeling that somehow, if relief were granted, the Court would be impinging on States' Rights" (Appendix B at p. 16a).

Following the vacating of the restraining order prohibiting prosecutive action Dr. Dombrowski was indicted for violation of Rev. Stat. Title 14, Section 360 for failing to register with state authorities as a member of the Southern Conference Educational Fund, charged with being a "communist-front" organization in that it was "essentially the same as the Southern Conference for Human Welfare" cited by the House Committee on Un-American Activities in 1944 and 1947 as a communist front organization. This count carries a penalty of 10 years imprisonment and \$10,000 fine. A second count charged Dr. Dombrowski with participating in the management of a "subversive organization" in that he was Executive Director of the Southern Conference Educational Fund. This count carries an identical penalty.

Benjamin Smith was indicted on 3 counts for being a member of Southern Conference, its Treasurer, and for being a member of the National Lawyers Guild. Bruce Waltzer was indicted solely for being a member of the National Lawyers Guild. The indictments are set forth in full in Appendix D.

E. The Questions Presented Are Serious and Substantial.

(1) The District Court had the power and the duty to entertain the complaint.

(i) This appeal raises questions of profound importance to the functioning of the Federal district courts within the framework of the Federal Union. If the opinion of the majority of the court below should be sustained the fundamental role of the Federal district court as a forum for

the protection of federally created constitutional rights will disappear. As the dissenting opinion of Circuit Judge John Minor Wisdom so clearly warns, should the invocation of the doctrine of "States Rights" to justify abdication of federal judicial responsibility be tolerated the command of the Supremacy Clause will be nullified.

An acceptance of the doctrines of federal judicial impotence espoused by Judges West and Ellis would result in the virtual closing down of the only meaningful judicial tribunals in the states of the deep South presently available for the vindication of fundamental federal constitutional rights. The elimination of any effective judicial forum for the prompt and decisive protection of these rights, within the context of the ever-increasing movement of Negro citizens for equality and freedom, would create a constitutional crisis of grave dimension. The absence of any tribunal of original jurisdiction prepared to enforce federal constitutional rights would threaten the fundamental assumptions underlying the national commitment to a theory of government under law which encourages and permits social progress and change to take place within the channels of peaceful democratic expression.

The gravity of the questions posed by the lower court's renunciation of federal judicial responsibility is sharply stated by Circuit Judge Wisdom in his opening comments in the dissenting opinion:

"... the crowning glory of American federalism is not States' Rights. It is the protection the United States Constitution gives to the private citizen against *all* wrongful governmental invasion of fundamental rights and freedoms.

"When the wrongful invasion comes from the State, and especially when the unlawful-state action is locally popular or when there is local disapproval of the requirements of federal law, federal courts must expect to bear the primary responsibility for protecting the individual. This responsibility is not

new. It did not start with the *School Segregation Cases*. It is close to the heart of the American Federal Union. It is implicit in the replacement of the Articles of Confederation by the Constitution. It makes federalism workable."

(ii) The majority of the court below holds in effect that under the never clearly defined doctrine of "states-rights" the Federal district courts do not have the power to entertain a cause of action seeking injunctive relief against unconstitutional state action. This they maintain is particularly so when state action is posed in terms of defense of the right of "self-preservation". Appendix A at p. 4a). But as Judge Wisdom bluntly rejoined, "There is not the slightest doubt as to the constitutional power of a federal court to block prosecution in a state court under an unconstitutional statute." (Appendix B, at p. 35a). The refusal of the majority of the three-judge court to entertain the complaint flies in the face of principles of fundamental federal responsibility enunciated as early as *Osborn v. Bank of the United States*, 9 Wheat 738, 6 L. Ed. 204 and restated authoritatively in *Ex parte Young*, 209 U. S. 123 (1908).

The power of a federal district court to entertain a cause of action seeking relief from threatened enforcement of an unconstitutional state statute is not open to question. *Ex parte Young*, *supra*; *Truax v. Reich*, 239 U. S. 33; *Terrace v. Thompson*, 263 U. S. 197; *Hague v. CIO*, 307 U. S. 496. The fact that a state may ground its threatened unconstitutional action upon an asserted right to self-preservation does not diminish the power or duty of a federal district court to entertain a complaint which seeks relief from the impending unconstitutional state action. Increasingly the utilization of state statutes and procedures to harass and impede the exercise of federally created constitutional rights in efforts to achieve equality for Negro citizens is sought to be justified as a necessary means of protecting the state from subversion. See *Gibson v. Florida Committee*, 372 U. S. 539. See also, for example,

the recent series of cases now awaiting decision before the Court of Appeals for the Fourth Circuit in *Baines v. City of Danville, Virginia*, #9080, 9081, 9082 and 9083. If the assertion of a state's right to "self-preservation" can effectively negate the existence of federal judicial power to restrain unconstitutional state action, a new formula has been devised to replace the repudiated doctrines of interposition and nullification.

(iii) The majority of the three-judge court not only denies the existence of federal jurisdiction to entertain the complaint but finds that there is no equitable jurisdiction to restrain state criminal statutes or proceedings. This assumption not only disregards the careful affirmative statements by this Court of equity power where criminal statutes or proceedings threaten immediate and irreparable injury, *Ex parte Young, supra*; *Doud v. Hodge*, 350 U. S. 485; *Truax v. Reich, supra*; *Pierce v. Society of Sisters*, 268 U. S. 510; *Hague v. CIO, supra*; *Spielman Motor Sales Co. v. Dodge*, 295 U. S. 89, but rejects the recent powerful restatement by the Fourth and Fifth Circuits of the necessity for the exercise of this equitable power in the area of the protection of federally created civil rights.

In the Fourth Circuit in the recent thorough and exhaustive opinion in *Jordan v. Hutcheson*, 323 F. 2d 597 (1963), and in the Fifth Circuit in a series of landmark opinions including *Browder v. Gayle*, 142 F. Supp. 707, (three-judge court) aff'd 352 U. S. 903; *Bush v. Orleans Parish School Board*, 194 F. Supp. 182 (three-judge court); *Morrison v. Davis*, 252 F. 2d 102 (CA 5); *United States v. Wood*, 295 F. 2d 772 (CA 5); *City of Houston v. Dobbs*, 232 F. 428 (CA 5); *Bailey v. Patterson*, 323 F. 2d 201 (CA 5, Sept. 1963), the concept has been forcibly restated by those Courts of Appeals most familiar with the problem, that federal equity power must be available where state criminal statutes or proceedings are utilized to interfere with or impede the exercise of fundamental federal constitutional rights.

Time and again both Courts of Appeals have sought to explain that this Court's statement in *Douglas v. City of Jeannette*, 319 U. S. 157, that equity will not "ordinarily" restrain criminal proceedings does not refute the existence of equitable power to protect fundamental constitutional rights from immediate and irreparable injury. Cf. *City of Houston v. Dobbs*, *supra*; *United States v. Wood*, *supra*. Yet, as in the opinion of the majority below, the rule of *Douglas v. Jeannette*, *supra*, is constantly invoked by those who would restrict or eliminate the role of the federal courts in this increasingly crucial area of national life. Circuit Judge Wisdom has here carefully restated the principles underlying the assertion of equity jurisdiction in cases involving an imminent threat to fundamental constitutional rights. In affirming this restatement this Court should clarify the statements in *Douglas v. Jeannette*, *supra*, or if necessary modify and limit its language. Cf. the suggestion of the Fifth Circuit in *Morrison v. Davis*, *supra*.

The increasing use of state criminal statutes and proceedings as a device to harass and deter the exercise of fundamental constitutional rights in efforts to obtain equality for Negro citizens, requires a vigorous affirmation of the existence of the necessary federal equity power to protect fundamental federally created rights. See Lnsky, *Racial Discrimination and the Federal Law: A Problem in Nullification*, 63 Columbia Law Review 1163 (Nov. 1963)..

(iv) The majority below asserts that Title 28 U. S. C. 2283 is a bar to the injunctive relief sought in the complaint. As Judge Wisdom has pointed out, the federal plenary action was brought prior to the institution of any state court criminal proceeding. Title 28 U. S. C. 2283 accordingly does not bar equitable relief. *Ex parte Young*, *supra*; *Truax v. Reich*, *supra*; *Looney v. Eastern Texas R.R.*, 247 U. S. 214; *American Houses v. Schneider*, 211 F. 2d 881 (C. A. 3); Hart and Wechsler, *The Federal Courts and the*

Federal System 847; Moore, *Commentary on Judicial Code*, 408.

Furthermore, Title 28 U. S. C. 2283 by its own terms does not apply to injunctions against state proceedings where injunctive relief has been expressly authorized by an Act of Congress. Such relief has been expressly authorized by the Civil Rights Statute upon which this complaint is grounded. Title 42, U. S. C. 1983 expressly authorizes injunctive relief against state court proceedings. *Morrison v. Davis, supra*; *United States v. Wood, supra*; *City of Houston v. Dobbs, supra*. See also Brief Amicus Curiae for the United States in *Baines v. City of Danville*, #9080, 9081, 9082, 9083, 4th Circuit, presently awaiting decision, argued September 23, 1963.

Title 28 U. S. C. 2283 may not be distorted so as to frustrate the essence of the principles of comity and equity it was designed to codify. *Smith v. Apple*, 264 U. S. 274. It should not be read so as to bar equitable relief which Congress expressly authorized to protect federally created rights.

(v) Judges West and Ellis cloak their abdication of federal judicial responsibility with an assertion of the doctrine of "abstention". But this Court recently disposed of this technique for evading the firm duty of the federal district court to exercise the jurisdiction conferred upon it by Congress in the Civil Rights Act to protect federally created rights. *McNeese v. Board of Education*, 373 U. S. 668. A federal district court may not abstain from meeting its obligations under the Constitution and the statutes of Congress to provide a forum for the vindication of fundamental constitutional rights.

The context out of which this appeal rises emphasizes the total abdication of judicial responsibility reflected in the dismissal of the complaint. For, as Circuit Judge

Wisdom concluded in rejecting the holdings and rationale of the majority of the Court:

"Under any rational concept of federalism the federal district court has the primary responsibility and the duty to determine whether a state court proceeding is or is not a disguised effort to maintain the State's unyielding policy of segregation at the expense of the individual citizen's federally guaranteed rights and freedoms."

For the heart of the matter is, as Judge Wisdom points out:

"Assuming the truth of the complaint, as the Court *had* to do in order to dismiss the suit, the case is a classic example for raising the shield of the Constitution in protection of a citizen's constitutional rights."

(2) The Louisiana statutes here challenged are violative of the Fourteenth Amendment to the Constitution of the United States on their face.

(i) The statutes here under challenge are so broad in their sweep, so vague and indefinite in their definitions and characterizations of prohibited activity that they fail to meet the most minimal standards of the First and Fourteenth Amendments. *Wright v. Georgia*, 373 U. S. 284; *NAACP v. Button*, 371 U. S. 415; *Smith v. California*, 361 U. S. 147, 151; *Winters v. New York*, 333 U. S. 507, 509-510, 517-518; *Herndon v. Lowry*, 301 U. S. 242; *Stromberg v. California*, 283 U. S. 359; *United States v. C. I. O.*, 335 U. S. 106, 142. The unlimited commands of the statutes conflict sharply with the fundamental guarantees of free speech, assembly, association and the right to petition for redress of grievances. *Gibson v. Florida Committee*, 372 U. S. 539. *Cramp v. Board of Public Instruction*, 368 U. S. 278.

The most cursory examination of these statutes reveals a vagueness and over-breadth trenching upon First Amendment liberties more sweeping than any statutory regulations in this delicate area previously considered by this Court. The statutory definitions patently violate every

guiding principle this Court has developed over the years to protect the freedoms embraced in the First Amendment.

One striking example of the over-breadth of language which turns these statutes into "a dragnet which may enmesh anyone" (see *Herndon v. Lowry, supra*) is the critical definition of a "communist" or a member of the "Communist Party". According to the terms of the statutes the "Communist Party" sweeps up within its orbit "any organization which in any manner advocates or acts to further the success of the program of world domination of the international communist conspiracy." All of the serious criminal sanctions imposed by the statutes rest upon this basic definition. But the words here used are simply not "susceptible of objective measurement". *Cramp v. Board of Public Instruction, supra*, at p. 286. As this Court pointed out in *Cramp*, these words permit an "extraordinary sweep." Any organization or group of people, formal or informal, which engages in any activity in the State of Louisiana which may be construed by prosecution officials to parallel or coincide with "in any manner" any of the objectives, immediate or long-range, of what is characterized without further definition as the "communist conspiracy" falls within the proscribed area.

This is no academic or remote possibility. As Judge Wisdom points out in his dissenting opinion in describing the over-breadth of this statutory language:

"This Court knows from other litigation, particularly *United States v. Louisiana, E. D. La., Civil Action No. 2548*, that the Louisiana legislature regards the movement to increase Negro voting in the State as part of the Communist conspiracy. All of the organizations promoting increased Negro voting registration therefore falls within the definition of "communist party", and any member could be prosecuted under the Louisiana Anti-Subversion Law."

And as this Court recently said in *NAACP v. Button, supra*:

"It makes no difference whether such prosecutions or proceedings would actually be commenced. It is enough that a vague and broad statute lends itself to selective enforcement against unpopular causes * * *. Its mere existence could well freeze out of existence all such activity on behalf of the civil rights of Negro citizens."

The constitutional vice of over-breadth raised by these Louisiana statutes is far more serious than the problems considered by this Court in *NAACP v. Button* and *Cramp v. Board of Public Instruction*, both *supra*. As Judge Wisdom points out, these statutes were enacted by a state legislature which "regards the movement to increase Negro voting in the state as part of the communist conspiracy." In *Cramp* this Court warned that "it would be blinking reality not to acknowledge that there are some among us always ready to affix a communist label upon those whose ideas they violently oppose." *Supra*, at p. 286. The context within which these statutes were passed and their attempted enforcement against these appellants (cf. *NAACP v. Button, supra*) reveal their constitutional invalidity. These statutes on their face lend themselves to "selective enforcement" which may result in "broadly curtailing group activity" and may "easily become a weapon of oppression". Cf. *NAACP v. Button, supra*. The most elementary protection of First and Fourteenth Amendment liberties requires the striking down of statutes so patently designed to restrict fundamental freedoms.

The other provisions and definitions of the statutes equally contain the same constitutional defects. For example, the definition of "organization" is so broad and loosely drawn as to sweep within its ken any conceivable association or grouping of people. Cf. *Herndon v. Lowry, supra*; *Stromberg v. California, supra*. The definition of a "subversive organization", is void because it of necessity

contains within its scope the vague definition of "communist" discussed above, includes additional indefiniteness. According to the terms of sub-division 5 of Section 359, a "subversive organization" could be any organization which sought a change in the "constitutional form of government of the State of Louisiana" by "unlawful means".

It is scarcely an "absurdity", cf. *Cramp, supra*, to suggest that an organization which sought by active means to abolish the system of segregation in the State of Louisiana might well find itself caught up in this dragnet definition. Even peaceful protest has been characterized by certain state authorities of Louisiana as "illegal" methods of obtaining social change. Cf. *CORE v. Douglas*, 318 F. 2d 95, (CA 5 1963). And is it an "absurdity" to suggest that it is possible that authorities of this State consider the system of segregation to be deeply ingrained into the "constitutional form of government of the State of Louisiana"? Cf. *Bush v. Orleans Parish School Board, supra*.

The other sections of the statutes lend themselves to the same analysis. We have centered the Court's attention upon the definitions of "communist", "Communist Party", "organization", and "subversive organization", because these are the most important operative definitions in the statute. One other example is illuminative of the general approach. The definition of "communist propaganda" in Sec. 390.1, upon which the penal provision of Sec. 390.2 rests, is, again in the words of this Court, "extraordinary". *Cramp v. Board of Public Instruction, supra*.

A definition of "propaganda", which sweeps into its scope any "communication or material * * * which advocates, instigates or promotes any racial, social, political or religious disorder * * *" or which "tends to create or encourage disrespect for duly constituted legal authority, either federal or state", patently violates every principle this Court has ever enunciated to enforce the First and Fourteenth Amendments. Rarely has a statute ever been

brought before this Court so obviously void for vagueness and over-breadth. A reading of these statutes suggests the conclusion that their enactors never seriously contemplated that these proscriptions would ever survive serious constitutional scrutiny.

The simple fact of the matter is that the total effect of the incredibly broad dragnet character of these statutory provisions, the built-in presumption of guilt, the sweeping proscriptions against membership in organizations and the possession of books and literature, is to erect a powerfully effective deterrent against the exercise of the most elementary rights of press, speech, assembly and free association. These statutes constitute a gigantic prior restraint against the exercise of First Amendment liberties by Negro and white citizens of Louisiana in their effort to achieve the equal protection of the laws guaranteed by the Fourteenth Amendment. Relief against the enforcement of such statutes is a paramount responsibility for the federal courts.

(ii) These statutes further violate the constant insistence of this Court that in the area of the First Amendment even though governmental design be legitimate and substantial, that purpose may not be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. *Shelton v. Tucker*, 364 U. S. 479; *Lovell v. Griffin, supra*; *Schneider v. State, supra*; *Cantwell v. Connecticut*, 310 U. S. 296; *Talley v. California*, 362 U. S. 60. Ample legislation exists on the statute books of Louisiana and the federal government to meet any actual threat or danger to the security of that state. See, for example, R. S. Title 14, Sec. 113 (treason); R. S. 14, Sec. 114 (misprison of treason); R. S. 14, Sec. 115 (criminal anarchy); R. S. 53, Sec. 201 (sabotage). It is perfectly clear that these are not statutes narrowly drawn to meet a specific problem but rather, broadly drawn for the purpose of crippling free exercise of First Amendment rights. As this Court said in *Shelton v. Tucker, supra*, "the unlimited

and indiscriminate sweep of the statute now before us brings it within the ban of our prior cases."

If the authorities of the State of Louisiana disagree with the activities of these appellants and thousands of Negro and white citizens of the State in seeking enforcement of the Equal Protection Clause, their recourse does not lie in the threatened enforcement of penal statutes broadly abridging First Amendment liberties. This Court recently found it necessary to restate the fundamental philosophy underlying the guarantees of the First Amendment: "Under our system of government counter-argument and education are the weapons available to expose these matters, not abridgment of the right of free speech and assembly." *Wood v. Georgia*, 370 U. S. 375.

(iii) Enactment and attempted enforcement of these statutes by Louisiana is merely another in the many recent attempts to utilize the legislative power of certain of the states to hamper, restrict and outlaw associations of Negro and white citizens joined together for the purpose of seeking implementation of the Equal Protection Clause. In each of these cases this Court has repeatedly struck down these efforts to interfere with the constitutionally protected right of freedom of association. *NAACP v. Alabama*, 357 U. S. 449; *Shelton v. Tucker*, *supra*; *Bates v. City of Little Rock*, 361 U. S. 516; *Louisiana v. NAACP*, 366 U. S. 293, affirming *Louisiana ex rel. Gremlion v. NAACP*, 181 F. Supp. 37; *Gibson v. Florida Legislative Investigating Committee*, 372 U. S. 539.

The forcible disclosure of membership in the Southern Conference Educational Fund, for example, or the National Association for the Advancement of Colored People, or the Congress of Racial Equality which might be required by Sec. 360 of the statute, see dissenting opinion of Judge Wisdom, would violate on its face the guiding principles established by this Court to protect freedom

of association. *NAACP v. Alabama* and *Louisiana v. NAACP*, both *supra*, are totally dispositive here. Sections 385 and 386 of the Louisiana statutes presently before the Court have already been held to be patently unconstitutional. See *Louisiana v. NAACP, supra*. The entire statutory scheme now here for review is even more clearly an effort to "stifle, penalize or curb the exercise of First Amendment rights". *Louisiana v. NAACP, supra*, at p. 297.

These Louisiana statutes, and in particular those criminal provisions which the state now seeks to enforce against these appellants, are simply efforts to require the disclosure of membership in organizations which will result in "reprisals against and hostility to the members". *NAACP v. Alabama, supra*, at p. 463; *Bates v. City of Little Rock, supra*, at p. 524. Cloaking the demand for exposure of membership in civil rights organizations under the guise of combatting subversion cannot escape the constitutional prohibition. As this Court said in *Bates v. Little Rock*, "freedoms such as these are protected not only against heavy-handed frontal attack but also from being stifled by more subtle governmental interference."

(iv) (a) These Louisiana statutes are further void as violative of the due process guarantee of the Fourteenth Amendment. They wholly fail to give any warning of the boundary between constitutionally permissible and constitutionally impermissible application of the statute. *Wright v. Georgia*, 373 U. S. 284. See also *Winters v. New York*; *Stromberg v. California*, both *supra*. See also *Cole v. Arkansas*, 333 U. S. 196. They ignore totally the fundamental principle that Americans may not be required at the peril of their liberty to speculate as to the meaning of penal statutes. *Lanzetta v. New Jersey*, 306 U. S. 451; *Connally v. General Construction Co.*, 269 U. S. 385; *United States v. Cohn Grocery Co.*, 255 U. S. 81. This Court has recently warned that these standards operate even more

strictly where the statutes in question inhibit the exercise of individual freedoms affirmatively protected by the Constitution. *Cramp v. Board of Public Instruction, supra*, at p. 287. See, also, *Herndon v. Lowry, supra*; *Thornhill v. Alabama*, 310 U. S. 88; *Winters v. New York*, 333 U. S. 507.

(b) The method of designation of proscribed organizations established in the statute violates the due process clause. The principal method established by the statutes for the designation of proscribed organizations is found in 359 (3) and 390.1 (2). These provisions require that designation of an organization, either through official "citation" or "identification," by the Attorney-General of the United States, the Subversive Activities Control Board or any committee or sub-committee of the United States Congress, "shall be considered presumptive evidence of the factual status of any such organization."

With the exception of the Subversive Activities Control Board all such citations or identifications are ex-parte, unilateral actions arrived at without judicial or quasi-judicial proceedings or the opportunity for judicial review. But this Court has held that the imposition of any sanctions whatsoever, civil or criminal, based upon such methods of designating alleged subversive organizations is violative of the due process clause of the Fifth Amendment. *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123. This inclusion in the Louisiana statutes of a form of designation of proscribed organizations which has already been held violative of due process renders the statutes themselves violative of due process. See *Nostrand v. Balmer*, 335 P. 2d 10 (S. Ct. Wash.)

There is an equally serious objection under the Due Process Clause to this method of designation of proscribed organizations. In *Louisiana ex rel. Gremillion v. NAACP* (E. D. La. New Orleans Div. 1960), 181 Fed. Supp. 37, a three-judge District Court struck down Sec. 386 of the statute presently before the Court holding that "The stat-

ute would require the impossible. It is clearly unconstitutional."

Sec. 359 (3) and 390.1 (2) equally "would require the impossible." To avoid serious penal sanctions any citizen of the state would be required to keep himself informed at every moment as to any citation or identification made in any way by any of the agencies listed in the sections. Before joining any organizations he would be required to conduct an extraordinary and exhaustive investigation to discover whether over an indefinite period of years the organization had ever been so identified in any way by any of these agencies. This "would require the impossible". See *Louisiana v. NAACP, supra*.

The opinion of this Court affirming the three-judge District Court in *Louisiana v. NAACP, supra*, wholly disposes of the operative statutory provisions presently before the Court. The present statute not only "would require the impossible of Louisiana residents or workers * * *" but "compounds the vices present in statutes struck down on account of vagueness * * *".

(c) These statutory provisions controlling the designation of proscribed organizations further violate the Due Process Clause in that they create unconstitutional presumptions of guilt. The statutes provide that the fact that an organization has been cited or identified in any way by certain specified federal offices or agencies "shall be considered presumptive evidence of the factual status of any such organization". This presumption is then applicable in the penal provisions of the statutes, Sec. 364 and 390.2. This statutory presumption is clearly unconstitutional. *McFarland v. American Sugar Refining Co.*, 1916, 241 U. S. 79, 86. See the recent opinions of the Court of Appeals for the Fifth Circuit in *Barrett v. United States*, 322 F. 2d 292 (Sept. 5, 1963, opinion by Wisdom, C. J.), and *Mann v. United States*, 319 F. 2d 404 (CA 5, 1963).

(d) These statutory provisions further offend against the Due Process Clause in that they constitute a separation of the power of a state legislature to characterize conduct as criminal, from the responsibility of that body, itself, to control the use of that power. *Sweezy v. State of New Hampshire*, 354 U. S. 234. In *Sweezy* this Court held that while the concept of separation of power embodied in the United States Constitution may not be mandatory upon state governments, nevertheless where a violation of this concept "causes a deprivation of the constitutional rights of individuals" this would result in "a denial of due process of law".

The holding of this Court in *Sweezy* is directly applicable here. The Louisiana legislature has improperly delegated its legislative duty to the Attorney-General of the United States, the Subversive Activities Control Board and the committees and subcommittees of Congress. This improper delegation of legislative power results in a serious deprivation of the constitutional rights of individuals, cf. *Louisiana v. NAACP*, *supra*, and constitutes a denial of due process of law. *Sweezy v. New Hampshire*, *supra*.

(e) The registration requirements in Section 360, as enforced by Section 364(7), violates on its face the privilege against self-incrimination. *Blau v. United States*, 340 U. S. 159; *Quinn v. United States*, 349 U. S. 155. Unlike *Communist Party v. SACB*, *supra*, this question is not raised here prematurely. The defendants have threatened to enforce this statute and in particular the criminal provisions against the appellants. Accordingly, the impact of the privilege against self-incrimination upon the requirement to register is properly before the Court.

(3) **The Louisiana anti-subversion laws have been superseded by federal legislation.**

Under the principles established by this Court in *Pennsylvania v. Nelson*, 350 U. S. 497, Congress has superseded the Louisiana statutes here in question through the en-

actment of the Smith Act of 1940, as amended in 1948, 18 U. S. C. 2385, the Internal Security Act of 1950, 50 U. S. C. 761 et seq. and the Communist Control Act of 1954, 50 U. S. C. 841.

Although the majority of the three-judge court refused to meet the constitutional challenge to the statutes, they discuss supersession at some length concluding that the validity of the state laws can be sustained under this Court's opinion in *Uphaus v. Wyman*, 360 U. S. 72, (Appendix A, at p. 10a). Judge Wisdom, dissenting, finds that *Uphaus* does not overrule *Nelson* and concludes that the Louisiana statutes are clearly superseded. (Appendix B, at pp. 27a-34a).

Nelson established three tests to indicate Congressional intention to preempt a field of legislation. Under each of these criteria the conclusion is inescapable that the Louisiana anti-subversion laws have been superseded. 1) The scheme of federal regulation is so pervasive that it can reasonably be inferred that Congress left no room for the states to legislate; 2) The state statutes deal exclusively with an area in which the national interest is so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject; and 3) Enforcement of the state laws present a serious danger of conflict with the administration of the federal program. *Pennsylvania v. Nelson*, *supra*, at p. 502, 504, 505.

There can be little debate that under *Nelson* the Louisiana statutes are superseded and suspended. An almost identical Louisiana statute was struck down as superseded by federal legislation by the Louisiana Supreme Court in *State v. Jenkins*, 236 La. 300, 107 So. 2d 648 (1958). See also, *Albertson v. Millard*, 345 Mich. 519, 77 N. W. 2d 104; *Commonwealth v. Gilbert* 334 Mass. 71, 134 N. E. 2d 13; *Braden v. Commonwealth*, 291 S. W. 2d 843 (Kentucky); *Commonwealth v. Hood*, 334 Mass. 76, 134 N. E. 2d 1; *Commonwealth v. Doisen*, 183 Pa. Supp. 339 132 A 2d 69.

However, the majority of the lower court reads *Uphaus* as virtually overruling *Nelson*. But every consideration which led this Court in 1956 to enunciate the guiding principles of *Nelson* are equally present today. The broad sweep which the majority below would give to *Uphaus* not only disregards the serious factors which led the Court in *Nelson* to enforce the Supremacy Clause in striking down the Pennsylvania statute, but, as Judge Wisdom points out in his dissenting opinion, "offers great prospects for disguising unlawful state action against federally protected rights".

Unless *Uphaus* is read as overruling *Nelson sub silentio*, it must be confined in the area of prosecutions for seditious activity to situations in which the activity sought to be punished or regulated is directed solely against a state and does not necessarily involve seditious acts against the federal government. As Judge Wisdom carefully demonstrates in his opinion holding the Louisiana laws superseded, these statutes are expressly directed at the same conduct proscribed by Congress.

Both in the preambles and throughout the text of the statutes the Louisiana legislature has frankly stated that the purpose of these particular laws is to legislate in an area already preempted by Congress precisely because "the federal legislation on this subject is either inadequate in its scope or not being effectively enforced" (Appendix C, at p. 57a). Even the narrowest reading of *Nelson* would require the conclusion that such state laws are superseded. Otherwise *Nelson* will have been emasculated into an empty gesture.

At a moment when certain states are increasingly turning to sedition prosecutions as a means "for disguising unlawful state action against federally protected rights" (Appendix B, at p. 28a) the principles which were enunciated in *Nelson* assume new vitality. They should not be undermined by a reading of *Uphaus* which would sanction state

prosecutive action in areas clearly preempted by the national government.

- (4) **The refusal to permit appellants to adduce any evidence as to the constitutionality of the statutes as applied violated due process of law.**

One of the most serious questions raised by this appeal arises from the blanket refusal of the majority of the three-judge court to permit the appellants to adduce any evidence whatsoever either in support of their contention that the state statutes were unconstitutional as applied, or in support of the charge that the appellees were engaged in a conspiracy under color of state law to deprive them of federal constitutional rights. See 42 U. S. C. 1983, 1985.

In order to justify its refusal to permit evidence of unconstitutional application the majority below found that the complaint failed to state a cause of action for relief. But as Judge Wisdom points out in his dissection of the majority rationale this results in an incredible conclusion. A federal district court here holds that there is no cause of action or right to relief in a federal court to protect federally guaranteed rights when citizens are threatened with prosecution under a state "anti-subversive" law not because they are subversive but because they advocate equality for Negro citizens. Judge Wisdom states the question sharply:

"Here again the Court reversed itself. At the first hearing the Court agreed unanimously to receive the evidence at a second hearing. This makes sense. There is no way of deciding whether a law is applied unconstitutionally without hearing evidence as to its application. Evidence was also admissible to show the purpose, operation, and effect of the law. Now, however, the majority has refused to allow the plaintiffs to prove their case by affidavit or by witnesses. The technical basis for the majority decision was its sustaining of the defendants' motion to dismiss on the ground that 'the complaint failed to state a claim upon which relief can be

granted'. This motion, of course, requires the Court to accept as true all of the allegations in the complaint. In effect the Court held that a citizen has no cause or right of action against the State, to defend federally guaranteed rights and freedoms, when *admittedly* the State is using its Anti-Subversion Law against him, not because he is subversive, but because he advocates civil rights for Negroes."

If appellant's cause of action, as here described by Judge Wisdom, is not a basis for relief in a federal court then the Civil Rights Act and the Fourteenth Amendment are in truth dead letters.

The appellants sought to introduce oral and written evidence to substantiate their claim for relief under the Civil Rights Act and the Constitution. Judge Wisdom concisely summarized the offer of proof:

"As emphasized earlier, the plaintiffs contend that, even if the law is valid on its face, the State has searched their homes and offices, seized their property, arrested them, and is about to prosecute them not because they are Communists—they deny any connection with communism—but because their thinking is not compatible with the State's segregation policy. The plaintiffs offer proof in the form of affidavits and witnesses willing to testify."

Perhaps unsure of its ground for refusing to hear this evidence, the majority argues that although "evidence has been frequently admitted to show unconstitutional application of statutes" (Appendix A at 13a), in this case since "the very vitals of our constitutional system of government are on the line" the appellants should not be allowed to introduce evidence which might result in a public hearing with "publicity attendant therewith" (Appendix A at 13a). This extraordinary reasoning evoked the comment from the dissenting Circuit Judge that "this rationale illustrates what I mean by the suggestions, respectfully tendered, that perhaps the decision is the result of a visceral reaction."

Evidence tending to show that a state statute otherwise valid on its face is unconstitutional as applied to a given circumstance or individual is clearly admissible. *United States v. Caroline Products Co.*, 304 U. S. 144; *Prentis v. Atlantic Coastline Co.*, 211 U. S. 210; *Railroad Retirement Board v. Alton RR*, 295 U. S. 230; see *Whitney v. California*, 274 U. S. 357, 379. Nothing could be more threatening to the "very vitals of our constitutional system of government" than the denial to these appellants of their day in court out of fear of the "publicity attendant" to the airing before the community and the nation of the serious charges they have brought against these state officials. Due process of law is not such a slender reed that it bends before the strong winds of public scrutiny. The issue here posed is as direct as that formulated by Judge Wisdom: "I know this, however; the plaintiffs have a right to sue in the federal district court and fair play entitles them to a day in court to make their proof." (Appendix B at 27a.)

Conclusion

This case urgently calls for the appellate supervisory jurisdiction of this Court. The extensive opinion of Circuit Judge Wisdom reflects throughout his deep concern with the serious and fundamental questions here raised. The decision of District Judges West and Ellis expresses the opinion that "for the good of all it is to be hoped that this case will reach the Supreme Court so that the matter of State-Federal relations in the judicial field may be clarified." (Appendix A at 13a.)

Questions are here raised important not only to the individual appellants but far reaching in their impact upon decisive areas in our national life. The issues presented by this appeal are inextricably bound up with the increasingly pressing question of our era—whether a system of democratic legal institutions can function so as to guarantee the peaceful achievement of equality and freedom for all American citizens. The protection of the exercise of the

fundamental freedoms of speech, press, assembly and association by those who seek the constitutional goal of equality for all is the highest responsibility of the federal courts. It is as Judge Wisdom has here pointed out a responsibility "close to the heart of the American Federal Union." It is a responsibility which may not be abdicated by the federal courts.

The decision below should be reversed, the complaint reinstated, and the relief prayed for granted.

Respectfully submitted,

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APPENDIX A

**Majority Opinion of District Judges West and Ellis,
Entered on February 13, 1964**

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA NEW ORLEANS DIVISION

CA 14019

JAMES A. DOMBROWSKI, ET AL.

v.

JAMES H. PFISTER, INDIVIDUALLY, ETC., ET AL.

ELLIS, FRANK B.—Judge and WEST—Judge.

This is a suit by James A. Dombrowski, Executive Director of Plaintiff Southern Conference Educational Fund, Inc. (hereinafter referred to as the SCEF) and the SCEF seeking to have declared unconstitutional Louisiana Revised Statutes Title 14, Sections 358 through 388, referred to as the Subversive Activities and Communist Control Law, and Louisiana Revised Statutes, Title 14, Sections 390 through 390.5, referred to as the Communist Propaganda Control Law.

The alleged purpose of the SCEF is to (1) promote the general welfare, and (2) to improve the economic, social and cultural standards of the Southern people in accordance with the highest American democratic institutions and ideals.

Defendants are James H. Pfister, a Louisiana State Representative and Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature; Russel R. Willie, a Major in the Louisiana State Police; Jimmie H. Davis, Governor of the State of

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Louisiana; Jack P. F. Gremillion, Attorney General of the State of Louisiana; Thomas D. Burbank, Commanding Officer of the Division of Louisiana State Police; and Jim Garrison, District Attorney for the Parish of Orleans, State of Louisiana. All parties defendant are sued individually and in their official capacities.

Jurisdiction of the Court over the complaint is sought under Title 28, United States Code, Sections 1331(a), 1343 (3) and (4), 2201 and 2202; Title 42, United States Code, Sections 1981, 1983, and 1985.

Plaintiffs basically set forth their cause of action in ten paragraphs set forth in Appendix A.

After suit was filed a petition of intervention and complaint was filed by Benjamin E. Smith and Bruce C. Waltzer (hereafter referred to as Intervenor). Mr. Smith is Treasurer of the SCEF and Mr. Waltzer is a "friend and supporter" of the SCEF. The petition of intervention and complaint is fully set forth in Appendix B.

Plaintiffs seek that a permanent injunction issue " . . . restraining the defendants, their agents and attorneys from the enforcement, operation or execution of [the statutes in question] and, restraining the defendants, their agents, and attorneys from impeding, intimidating, hindering and preventing the plaintiffs or members, friends and supporters of plaintiff corporation from exercising the rights, privileges, and immunities guaranteed to them by the Constitution and laws of the United States" The complaint terminates with a demand that a declaratory judgment issue declaring the statutes in question void on their face, and null and void as violative of the Constitution of the United States. Plaintiffs requested that a three-judge Court be convened to hear and determine the proceeding.

Intervenor ask for similar relief and also request that Foreman of the Orleans Parish Grand Jury, the individual members thereof and the Honorable Malcolm V. O'Hara,

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Judge, be made parties defendant. In addendum to the complaint the intervenors ask that a permanent injunction issue restraining the Orleans Parish Grand Jury and the Judge in Charge thereof, the Honorable Malcolm V. O'Hara, from enforcing the statutes in question.

Pursuant to plaintiff's request, a three-judge court was convened by the Honorable The Chief Judge for the Fifth Circuit to hear and determine the controversy.

In open court, and prior to a hearing, the court ordered that the motion for leave of court to intervene be granted, there being no objection by defendants. However, the intervention, insofar as it names the Foreman of the Orleans Parish Grand Jury, the individual members thereof and the judge presently in charge of the Grand Jury, the Honorable Malcolm V. O'Hara, as parties defendant, is **DENIED.**

The first phase of this case was argued on December 9, 1963, and was limited to the constitutionality of the statutes on their face, which was decided in the affirmative by a divided court; and a second hearing was held on January 10, 1964, for the sole purpose of determining after the statute had been constitutionalized whether or not these plaintiffs should be granted a "full blown" trial on the merits, in an attempt to show an unconstitutional application.

In considering this application the judges in the majority have assumed to be true all of the averments made in the petition.

Generally it may be soundly said that if the statutes in question are constitutional then the State Grand Jury, its Foreman, the Judge in charge and other state law enforcement officials may validly proceed with the enforcement and operation of same; and if the statutes are unconstitutional, the proper state or federal court, upon proper application by parties affected, would be the com-

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petent forum to enjoin the enforcement and operation of the statute by all officials.

The pleadings reveal that the plaintiffs and intervenors have been engaged, among other things, in urging the southern negro to exercise his constitutional rights to vote, to attend the school of his choice, and to have and enjoy all rights which are foreclosed to him by segregation barriers. The Court would like to first point out that these endeavors, if properly sought, are praiseworthy indeed for we will never enjoy a first class democracy as long as there walks second class citizens among the nearly two hundred million Americans.

However, this should never operate as to bar the state from proceeding in an orderly manner to enforce its own protective statutes, particularly where the federal government has not preempted the field. The State should, and does, have the right to determine in an orderly manner which organization or organizations are primarily or secondarily designed to overthrow, destroy or to assist in the overthrow or destruction of the constitutional form of local government by violence, force or any other unlawful means.

Can we deny the State the basic right of self-preservation, the right to protect itself? If so, truly this would be a massive emasculation of the last vestige of the dignity of sovereignty. This brings us to the specific statutes in question and the injunction requested.

"Federal injunctions against state criminal statutes either in their entirety or with respect to their separate and distinct prohibitions, are not to be granted as a matter of course, even if such statutes are unconstitutional." *Watson v. Buck*, 313 U. S. 387, 400. Federal Courts traditionally have refused, except in rare instances to enjoin criminal prosecutions under state penal laws. This principle is impressively reinforced when not merely the relations between coordinate courts, but between coordinate political authorities are in issue, *Stefmelli v. Minard*, 342

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U. S. 117. This has been manifested in numerous decisions of the Supreme Court involving a State's enforcement of its criminal law, *e.g.* *Douglas v. City of Jeannette*, 319 U. S. 157; *Watson v. Buck*, *supra*, *Beal v. Missouri Pacific Railroad Company*, 312 U. S. 45; *Cleary v. Bolger*, 371 U. S. 392.

Also see *England v. Louisiana Medical Board*, No. 7, October Term, 1963, — U. S. —, wherein Mr. Justice Douglas, in a special concurring opinion, uses the following language setting forth the circumstances under which the federal injunctive power has been denied:

“A federal court will normally not entertain a suit to enjoin criminal prosecutions in state tribunals, with review of such convictions by this court being restricted to constitutional issues. *Beal v. Missouri Pac. R. Co.*, 312 U. S. 45. A federal court declines to entertain an action for declaratory relief against state taxes because of the federal policy against interfering with them by injunction. *Great Lakes Co. v. Huffman*, 319 U. S. 293. Where state administrative action is challenged, a federal court will normally not intervene where there is an adequate state court review which is protective of any federal constitutional claim. *Burford v. Sun Oil Co.*, 319 U. S. 315; *Alabama Comm'n v. Southern R. Co.*, 341 U. S. 341. The examples could be multiplied where the federal court adopts a hands-off policy and remits the litigants to a state tribunal.”

These basic principles have been qualified under exceptional circumstances to allow interference when there is a clear showing that an injunction is necessary in order to afford adequate protection of constitutional rights. *Speilman Motor Company v. Dodge*, 295 U. S. 89; *Terrace v. Thompson*, 263 U. S. 197; *Packard v. Banton*, 264 U. S. 445; *Tyson v. Banton*, 273 U. S. 418; *Cline v. Frank Dairy*

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Company, 274 U. S. 445; *City of Houston v. J. K. Dobbs Company of Dallas*, 5 Cir. 232 F. 2d 428; *Morrison v. Davis*, 5 Cir. 252 F. 2d 102; *United States v. Wood*, 5 Cir. 295 F. 2d 172.

Assuredly the Supreme Court did not intend to countenance the application of this exception to the use of injunctive process by the federal system in such a way as to deprive the state and local courts of this nation in the exercise of their sovereign rights of self-protection. This Court should jealously guard these plaintiffs in their constitutional rights to equal protection of the laws, yet in our zeal to protect we should not consciously or unconsciously undermine the whole fabric of state and federal relationship as it struggles to survive its inherent constitutional posture.

The instant case postulates the basic constitutional issue whether threatened prosecution in the state courts imbued as it is with an aura of sedition or treason or acts designed to substitute a different form of local government by other lawful means, may properly be blocked and effectively thwarted by Federal action.¹

The general rule of *Watson v. Buck*, *supra*, is to be applied where the paramount right of a state to self-preservation is at issue.

¹ None of the cases cited involved so fundamental an element of state sovereignty as that of self-preservation, e.g. *Speilman* contested the New York Code of Fair Competition for the Motor Vehicle Retailing Trade; *Terrace* contested a Washington law forbidding aliens from owning land; *Packard* contested a New York law requiring motor carriers to post a bond; *Tyson* contested a New York law forbidding resale of tickets to the theatre, etc., at a price in excess of fifty cents of its printed value; *Cline* tested the Colorado Anti-Trust Act; *City of Houston* involved an ordinance forbidding the sale of food to airlines by other than franchised concessionaires; *Morrison* involved the desegregation of the New Orleans public transit system; and *Wood* involved voter intimidation.

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Mr. Justice Frankfurter, for the majority of the court, cautioned us in *Steffaneli v. Minard, supra*, at pages 123-124, that

“[W]e would expose every State criminal prosecution to insupportable disruption. Every question of procedural due process of law—with its far-flung and undefined range—would invite a flanking movement against the system of State Courts by resort to the federal forum, with review if need be to [the Supreme] Court to determine the issue.”

The Court will not presuppose incompetency or inability of the State Court judges to enforce federally protected constitutional rights. If the evidence has been illegally seized, it may be so declared in those courts; if the statutes in question are unconstitutional, they may be so declared by those Courts, Courts of Appeal, State Supreme Court, and an unsatisfied litigant still has ample opportunity for ultimate review by the United States Supreme Court of the federal questions involved. *Fenner v. Boykins*, 271 U. S. 240. A three-judge federal court should not be used as a vehicle to enjoin future enforcement of state statutes, constitutional or otherwise. *Watson v. Buck, supra*.

Nor is the instant case similar to *Aelony v. Pace* and *Harris v. Pace*, Civil Actions No. 530 and 531 respectively, Middle District of Georgia, decided Nov. 1, 1963, — F. Supp. —, for those cases involved the enjoining of a threatened prosecution under the Georgia “Insurrection Statute” which has been held unconstitutional in its application in *Herndon v. Lowry*, 301 U. S. 242, and the “Unlawful Assembly Statute” which had just recently been held unconstitutionally vague in *Wright v. Georgia*, 373 U. S. 284.²

² It is significant to note that the *Herndon* and *Wright* cases both found their way to the United States Supreme Court via the state courts, and not by the flanking movement to a three-judge federal district court.

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The *Aelony* and *Harris* cases involved the purely unconstitutional situation of a defendant being held without bail for a misdemeanor.³

It was said by Mr. Justice Holmes in *The Sacco-Vanzetti Case*, Transcript of the Record 5516, that "[t]he relation of the United States and the Court of the United States is a very delicate matter that has occupied the thoughts of statesmen and judges for a hundred years and cannot be disposed of by a summary statement that justice requires me to cut red tape and to intervene."

This brings us first to the narrow question of supersession, that is, of whether the State of Louisiana can investigate, indict and prosecute for sedition, subversion, or communist activity directed against the state or local government.

First of all the statutes differ from the others found in Title 14 of the Louisiana Revised Statutes, better known as the Louisiana Criminal Code, in that the balance of the Code deals with the protection of the individual member of society, whereas, the statutes under consideration deal solely with the protection of the constitutional form of local government chosen collectively by all of the members of society.

³ The dissenting opinion, per Judge Elliott, correctly points out that the equity powers of a federal court should not be invoked to interfere by injunction with threatened criminal prosecutions in a state court. He further states that " * * * I would require the assessment of reasonable bail in those instances where no bail has been assessed. I would impinge no further upon the prerogatives of the state courts * * *." After stating that the constitutionality of the same statutes were then pending before the Supreme Court of Georgia, he continues: " * * * For us at this time to deal with the same questions about to be considered by the Supreme Court of the state strikes me as being an unwarranted interference with an embarrassment to the state court proceedings and a breach of those principles of comity historically governing the relations between the courts of the states and the courts of the United States."

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Louisiana is not the only state in the Union with sedition or treason or subversive activities and communist control laws. [See Appendix C]

Pennsylvania v. Nelson, 350 U. S. 497, involved the first such statute to be subjected to constitutional interpretation. Defendant-Respondent Steve Nelson, an acknowledged communist, was convicted under Section 207 of the Pennsylvania Penal Code, commonly referred to as the Pennsylvania Sedition Act which proscribed sedition against the State of Pennsylvania and the United States. He was sentenced to imprisonment for twenty years and was ordered to pay a fine of \$10,000.00 and to pay the costs of prosecution in the sum of \$13,000.00. The Superior Court affirmed and the Supreme Court of Pennsylvania reversed on the narrow issue of supersession of the state law by the Federal Smith Act, 18 U. S. C. A. 2385.

The United States Supreme Court affirmed, "[s]ince we find that Congress has occupied the field to the exclusion of parallel state legislation, that the dominant interest of the federal government precludes state intervention, and that administration of state acts would conflict with the operation of the federal plan, we are convinced that the decision of the Supreme Court of Pennsylvania is unassailable." *Pennsylvania v. Nelson*, *supra*, at Page 509.

Thus it appeared that the federal government had completely pre-empted the field of sedition against the State and Federal Governments.⁴ The question then arose as to whether the "exclusion of parallel state legislation precluded the state from protecting itself from sedition."⁵

⁴ The *Nelson* subsequently received critical comments of the prevailing view in various law journals. 6 AM U.L. Rev. 53; 6 De Paul L. Rev. 155; 30 So. Cal. L. Rev. 101; 10 Vanderbilt L. Rev. 144; 31 Washington L. Rev. 300.

⁵ Subsequently and upon the strength of *Nelson*, the Louisiana Supreme Court declared an entire package of State Legislation on Communist Control as unconstitutional, see *State v. Jenkins*, 107 So. 2d 648.

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That question was laid to rest in *Uphaus v. Wyman*, 326 U. S. 72:

"In Nelson itself we said that the 'precise holding of the court . . . is that the Smith Act . . . which prohibits the knowing advocacy of the overthrow of the government of the United States by force and violence, supersedes the enforceability of the Pennsylvania Sedition Act which proscribed the *same conduct*.' (350 U. S. at 499) The basis of Nelson thus rejects the notion that it stripped the States of the right to protect themselves. All the opinion proscribed was a race between federal and state prosecutors to the courthouse door. The opinion made clear that a state could proceed with *prosecutions* for sedition against the State itself; that it can legitimately investigate in this area follows *a fortiori*." (360 U. S. at 76) (Italics supplied)

"Nor did our opinion in Nelson hold that the Smith Act has proscribed State activity in protection of itself either from actual or threatened 'sabotage or attempted violence of all kinds.' " (360 U. S. at 77)⁶

Thus it would appear that the state may validly proceed with prosecutions of sedition, treason, subversive activities and communist activities, carried on within the State and directed at the state alone.⁷ It is unnecessary, therefore, and this Court will not pass on the constitutionality of the Communist Propaganda Control Law and will also leave

⁶ After the *Uphaus* decision the Louisiana Legislature enacted the statutes in question deleting the prohibitive language making it a crime to advocate the overthrow of the United States Government. Act 270 of 1962, RS 14:358-388.

⁷ This is also the prevailing view expressed in a number of legal periodicals, e.g. 73 Harvard L. Rev. 163; 20 Louisiana L. Rev. 599; 28 Geo. Washington L. Rev. 461; 38 Texas L. Rev. 334.

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to the State Courts the questions of unfounded search warrants and warrants of arrest, improper use by the Joint Legislative Committee of the documents allegedly improperly seized, etc.

If the action taken by this Court on January 10, 1964, is construed as validating the Communist Control Act as to its constitutionality this action is, of the Court's own motion, hereby vacated, the Court here refraining from taking any action in advance of appropriate proceedings in the State Courts at the State Level. All these matters we commit to the hands of the state criminal tribunals who are equally competent to conscientiously apply protected constitutional rights, subject, of course, to proper supervision by the State Appellate-level courts and the United States Supreme Court.

A very recent case dealing with the State's overriding and compelling interest and how it is affected by the Fourteenth Amendment is *Jordan v. Hutcheson*, 4 Cir. 323 F. 2d 597, wherein it was pointed out that:

"When the court does act under the Fourteenth Amendment it must weigh the state's interest in the product of this effort against the interest of the citizen in his constitutional rights. Only if the state's interest is overriding and compelling will the courts condone an invasion of those rights for which the plaintiffs here seek protection." (Footnote omitted)

The case at bar presents one of the most basic and compelling interests that the state could have, i.e. the basic interest of self-preservation and the right to enforce this interest in a lawful manner, through its grand juries and district attorneys, the organic law of the state protecting it against subversion and treason where directed against the state alone.

Moreover, the *Jordan* case, *supra*, dealt with an injunction directed to a state legislative committee as distinguish-

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able from the instant case which strikes at the very heart of the state's organic authorities dealing with law and order.

It has also been urged upon us that this very court has declared Louisiana Revised Statutes 14:385 as unconstitutional, *State v. NAACP*, 181 F. Supp. 37, probable jurisdiction noted, 364 U. S. 839; affirmed 366 U. S. 293. The Court would like to point out that that case involved the unconstitutional application of the statutes to the National Association for Advancement of Colored People, a valid, lawful, private activity. Whether or not these statutes may be constitutionally applied to an invalid, unlawful secret activity remains an open question which we likewise commit into the hands of the state tribunals.⁸

During the first hearing of the matter it was indicated that the court would hear the arguments on the motion to quash and on the constitutionality of the act insofar as the face of it was concerned. It was determined that if the Court should hold the statute constitutional on its face that there would be another hearing for the reception of evidence. A second hearing was held on the question of whether a full trial would be permitted to show unconstitutional application.

The Court is of the opinion that a hearing for the admission of evidence is not necessary where only questions of law are presented, and where plaintiff's allegations for the purpose of this motion are admitted to be true and would not either in law or in fact entitle him to injunctive relief. *Securities & Exchange Commission v. Groze*, 156 F. Supp. 544; *Schlosser v. Commonwealth Edison Company*, 7 Cir. 250 F. 2d 478, cert. den. 357 U. S. 906; Cf. *Sewell v. Pegelow*, 4 Cir. 291 F. 2d 196, and if a hearing reveals that plaintiff

⁸ See *People of the State of New York ex rel. Bryant v. Zimmerman*, 276 U. S. 63, wherein the Court held constitutional a similar statute curtailing the activities of the Ku Klux Klan stating that the First Amendment does not protect associations for unlawful purposes.

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has not stated a claim upon which relief can be granted, and cannot state such a claim, the court may dispose of the case finally by dismissing the complaint. *Mast Foss & Company v. Stover Mfg. Co.*, 177 U. S. 485, and that is what this court proposes to do.

Plaintiffs argued vociferously that the Court should hold a special hearing for the reception of evidence that these statutes, if constitutional, have been unconstitutionally applied as to them. This court will not gainsay the rule that evidence has been frequently admitted to show unconstitutional application of statutes. *NAACP v. Alabama*, 357 U. S. 449; *Gates v. Little Rock*, 361 U. S. 516; *Louisiana v. NAACP*, 366 U. S. 293; *Gibson v. Florida*, 372 U. S. 539; *NAACP v. Button*, 371 U. S. 415; but here the very vitals of our constitutional system of government are on the line.

The reception of evidence is a double-edged blade. It will cut to the quick both ways. If plaintiffs are permitted to introduce evidence of an unconstitutional application of the statutes, respondents would certainly be entitled to follow with evidence that the individual plaintiff is a Communist and that the corporate plaintiff is a Communist-front organization, and that the statute, as applied, was a constitutional application. In effect, these litigants, plaintiffs, defendants and intervenors, would indulge in a Star Chamber proceeding with all the "folderol" and publicity attendant therewith.

For the good of all it is to be hoped that this case will reach the Supreme Court so that the matter of State-Federal relations in the judicial field may be clarified. If the federal district judges are to act as a police force to ride herd over state and municipal courts then we had best be so instructed and the matter for once and for all laid to rest along with a vital part of the state judicial system already weakened by a constant federal encroachment in both the statutory and judicial fields.

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This country was nurtured to maturity by leaders who, in the nineteenth century, constantly alerted the people of this nation to the danger of giving preferential treatment to any one branch in our three-pronged governmental system over the other. Apprehension was expressed by Jefferson when he stated:

“The great object of my fear is the Federal Judiciary. That body, like gravity, ever acting with noiseless foot, and in alarming advance, gaining ground step by step, and holding what it gains, is engulfing insiduously [sic] the [State] governments into the jaws of that which feeds them”.

Thomas Jefferson to Spencer Roane (1821).

We must stride forward at all times to purify our democracy but let it not be said that the judiciary functioning as both a court and a congress took away inherent rights from one group, religious, ethnic, etc., in our society in order to bestow it upon another. All should be treated alike.

The application for the injunction will be denied and the suit dismissed, each party to bear its own costs, for failure to state a claim upon which relief can be granted.

APPENDIX B

Dissenting Opinion of Circuit Judge John Minor Wisdom

WISDOM dissenting:

I respectfully dissent.

The main issue in this case is not, as the majority opinion declares, "the State's basic right of self-preservation". No one questions this right.

The main issue is whether the State⁹ is abusing its legislative power and criminal processes: whether the State, under the pretext of protecting itself against subversion, has harassed and humiliated the plaintiffs and is about to prosecute them solely because their activities in promoting civil rights for Negroes conflict with the State's steel-hard policy of segregation. They ask the federal court to defend their federally protected rights.

The Court declined to act on the constitutional issues the case presents and refused the plaintiffs an opportunity to offer evidence in proof of their case.¹⁰ It is not clear

⁹ The prime mover against the plaintiffs is the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature. The plaintiffs sued James H. Pfister, Chairman of that Committee, individually and as Chairman. The other defendants are Jimmie H. Davis, Governor of the State; Jack F. F. Gremillion, State Attorney General; James Garrison, District Attorney for the Parish of Orleans; Thomas D. Burbank, Commanding Officer of the State Police; and Russell R. Willie, a Major in the State Police. For convenience, the majority opinion speaks of all or some of these individuals when it uses the term "State." I do the same.

Also for convenience, "plaintiffs" includes "intervenor" and the Louisiana Anti-subversion Law refers both to R.S. 14:358-388, The Subversive Activities and Communist Control Law, and R.S. 390-390.5, the Communist Propaganda Control Law.

¹⁰ The plaintiffs have offered the affidavits of Dr. Martin Luther King, Rev. Fred L. Shuttlesworth, Rev. C. T. Vivian, Dr. Herman Long, and Bishop Edgar A. Love. Ben Smith, Bruce Waltzer, Dr. Dombrowski and others are prepared to testify.

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why it did. To me, the majority's decision appears to rest on a sort of visceral feeling that somehow, if relief were granted, the Court would be impinging on States' Rights.

The concept of the States as political bodies rather than administrative units of the national government tends to fractionate power, preserve regional differences, encourage home rule, and promote democracy at all levels of Government. These characteristics of American federalism are essential to the kind of government I want to live under. I say, however, with the Madison of the Constitutional Convention:

“Was, then, the American Revolution effected, was the American Confederacy formed, was the precious blood of thousands spilt, and the hard-earned substance of millions lavished, not that the people of America should enjoy peace, liberty, and safety, but that the government of the individual States . . . might enjoy a certain extent of power and be arrayed with certain dignities and attributes of power! . . . [A]s far as the Sovereignty of the States cannot be reconciled with the happiness of the people, the voice of every good citizen must be. Let the former be sacrificed to the latter.” (Emphasis added.)¹¹

“States' Rights” are mystical, emotion-laden words. For me, as for most Southerners, the words evoke visions of the hearth and defense of the homeland and carry the sound of trumpets and the beat of drums. But the crowning glory of American federalism is not States' Rights. It is the protection the United States Constitution gives to the private citizen against *all* wrongful governmental invasion of fundamental rights and freedoms.

¹¹ The Federalist, No. XLV.

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When the wrongful invasion comes from the State, and especially when the unlawful state action is locally popular or when there is local disapproval of the requirements of federal law, federal courts must expect to bear the primary responsibility for protecting the individual.¹² This responsibility is not new. It did not start with the *School Segrega-*

¹² "[T]he principal, if not the only, reason for establishment of the lower courts was the need for dealing with local opposition to, or disregard of, the federal law. Unless they perform this function adequately, there is little reason to have them at all * * *. And it is quite clear that the reason Congress was given such power, and presumably the basic reason for the existence of the federal courts which Congress did establish forthwith was the need for national tribunals to enforce the national law in the teeth of local resistance." Lusk, *Racial Discrimination and the Federal Law: A Problem in Nullification*, 63 Col. 1163, 178 (1963). Similarly, Mr. Justice Douglas, who must be in a state of shock at the thought that this Court quoted his opinion in *England v. Louisiana State Board of Medical Examiners*, 32 L.E. 4093, 4096, in support of the result reached here, said in that opinion: "Today we put federal jurisdiction in jeopardy. As the Court says there are many advantages in a federally constructed record. Moreover, federal judges appointed for life are more likely to enforce the constitutional rights of unpopular minorities than elected state judges * * *. The Court recognizes the value to the litigants of being in the federal court * * *. The value of the independence of federal judges, and the value of an escape from local prejudices when fact findings are made are considerable ones." Justice Douglas quoted Madison with regard to the problem when the creation of lower federal courts was being mooted: "What was to be done after improper verdicts, in state tribunals, obtained under the biased directions of a dependent judge, or the local prejudices of an undirected jury? To remand the cause for a new trial would answer no purpose. To order a new trial at the supreme bar would oblige the parties to bring up their witnesses, though ever so distant from the seat of the court. An effective judiciary establishment, commensurate to the legislative authority, was essential. A government without a proper executive authority, was essential. A government without a proper executive and judiciary would be the mere trunk of a body, without arms or legs to act or move." 5 *Elliott's Debates* (Lipp. ed. 1941), p. 159.

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tion Cases. It is close to the heart of the American Federal Union. It is implicit in the replacement of the Articles of Confederation by the Constitution. It makes federalism workable.

* The distinguishing feature of this case, which the majority chooses to ignore, is the contention that the State, under the guise of combatting subversion, is in fact using and abusing its laws to punish the plaintiffs for their advocacy of civil rights for Negroes. It so happens that the plaintiffs contend that the Louisiana Anti-Subversion Law is unconstitutional and, besides, has been superseded by congressional legislation. If those contentions are sound, unquestionably the plaintiffs have a right to relief in the federal court. But the deep thrust of the complaint is the State's abuse of its power as to the plaintiffs. If the evidence on this point should support the plaintiffs, they would be entitled to relief—even if the law were clearly constitutional.

It is true that some law-violators, caught dead to rights, say "You can't do that to me", and shout "Civil Rights" in an effort to escape just punishment. But it is also true, and every judge in this circuit knows it, that in some cases, all too many cases, persons have been punished without any justifiable basis or punished cruelly beyond the bounds of just punishment for a minor offense, to serve as an object lesson to others, because they opposed the State's policy of segregation.¹³ The plaintiffs assert that this is

¹³ On World-Wide Communion Sunday in October 1963 three young women, two of whom were Negroes, were arrested for attempting to attend religious services at a Methodist Church in Jackson, Mississippi. They got only as far as the church steps when they were told that they were not welcome. A policeman gave them two minutes to move on. As they started to walk away he told them that they had taken too long. He arrested them. They were indicted for violating Section 2090 (trespass) and Section 2406 (disturbing worship) of the Code of Mississippi. The Police Justice's Court of

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such a case. There is, therefore, no substance to the majority's argument that the federal court is here being asked to interfere with orderly state criminal processes, and that if the Court granted relief it would be a precedent for interfering *every* time a criminal defendant protested that his constitutional rights were invaded. The processes under attack in this case are, allegedly, not the State's usual, orderly, impersonal, legislative and criminal processes.

This is a civil action which was brought *before* any criminal proceeding was begun in the state courts. There is therefore no unseemly clash of courts and no question of Section 2283 of the Judicial Code barring relief.¹⁴ Assuming the truth of the complaint, as the Court *had* to do in order to dismiss the suit, the case is a classic example for raising the shield of the Constitution in protection of a citizen's constitutional rights. Congress recognized the problem in federal-state relations now before us and in the Civil Rights Act expressly authorized citizens to protect their constitutional rights by suing in the federal court.

If the Louisiana Anti-Subversion Law is invalid on its face or invalid as applied to the plaintiffs, they should not be subjected to the public indignity of prosecution, the paralysis of earning ability while their case is pending, and a long, expensive appeal through the state courts to the United States Supreme Court. These are foreseeable and

Jackson sentenced them to a year's imprisonment and fined each \$1,000. They removed the case to the Federal District Court for the Southern District of Mississippi on the ground that their civil rights were violated. The district judge remanded the action back to the State Court. *Poole v. City of Jackson*, 5th Cir. 1964, No. 21058, pending on appeal on the right to appeal.

¹⁴ Ex parte Young, 209 U. S. 123 (1908); *Truax v. Reich*, 238 U. S. 33 (1915); *Looney v. Eastern Texas R.R.*, 247 U. S. 214 (1918); *American Houses v. Schneider*, 211 F. 2d 881 (3rd Cir. 1954); *Hart & Wechsler, The Federal Courts and the Federal System* 847 (1953) Note, enjoining State Court Proceedings 74 Harv. L. Rev. 726, 729 (1961).

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inevitable consequences of unlawful State action of the kind alleged here. Win, lose, or draw in the court of last resort—the individual citizen is a heavy loser when the State abuses its legislative power and criminal processes. The only adequate remedy is for the federal district court to stop the State at the start of its abuse of its governmental power. Whether the State is misusing its power can be determined only after a fair and full hearing. The logical forum for that determination is a federal tribunal.

This Court has jurisdiction. And as a three-judge Court it was instituted for just such a case. It should face up to the responsibilities incident to jurisdiction and to doing the job it was designed to do. Much as I regret to say it, and, of course, I mean no personal reflection on my colleagues, whom I esteem highly, I consider that this Court's refusal to pass on the constitutional issues and to give the plaintiffs a day in court is an indefensible denial of due process.

I turn now to a more detailed analysis of what the case is all about and how the Court has failed to meet its obligations as a federal district court.

I.

IS THE LAW UNCONSTITUTIONAL ON ITS FACE?

A. The plaintiffs make two major contentions with respect to the *per se* unconstitutionality of the Louisiana Anti-Subversion Law. First, they contend that the statute violates the freedoms of speech, assembly, and association guaranteed by the First and Fourteenth Amendments. Second, they contend that the law is so vague and indefinite and completely without standards that it violates due process and constitutes an unlawful delegation of legislative power.

B. This Court held a long and formal hearing for the sole purpose of deciding the *per se* validity of the law. At

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the end of the hearing the majority declared the law constitutional on its face. The Court has now reversed itself and, on the assumption that the plaintiffs will be prosecuted, shifted to the state courts responsibility for deciding the federal questions. *The majority opinion does not discuss any of the substantial constitutional issues the complaint raises.*

C. I shall not deal at length with the constitutional arguments, because of the Court's decision to finesse the subject.

Basically, everyone recognizes that the general scope of the statute is within the State's constitutional authority. The difficulty comes from the unlimited commands the statute imposes which conflict with individual rights of free speech and association. See *Gibson v. Florida Committee*, 1963, 372 U. S. 539, — S. Ct. —, — L. Ed. 2d —. One example will suffice to show the overbreadth of the statutory language. Section 359(2) defines "communist party" so as to include "any organization which in any manner advocates or acts to further the success of the program of world domination of the international communist conspiracy". This Court knows from other litigation, particularly *United States v. Louisiana*, E. D. La., Civil Action No. 2548, that the Louisiana legislature regards the movement to increase Negro voting in the State as part of the Communist conspiracy.¹⁵ All of the organizations promoting increased Negro voting registration therefore fall within

¹⁵ The "Key to Victory, A Manual of Procedure for Registrars of Voters, Police, Jurors and Citizens" is a pamphlet prepared by State Senator William M. Rainach and William M. Shaw. Senator Rainach was the first Chairman of Louisiana Joint Legislative Committee to maintain segregation and Mr. Shaw was the first counsel for the Committee. The pamphlet was used to instruct registrars. The pamphlet states and other evidence in the record indicates that "The Communists and the NAACP plan to register and vote every colored person of age in the South."

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the definition of "communist party", and any member could be prosecuted under the Louisiana Anti-Subversion Law. The Supreme Court's words in *NAACP v. Button* are apt here:

"It makes no difference whether such prosecutions or proceedings would actually be commenced. It is enough that a vague and broad statute lends itself to selective enforcement against unpopular causes. We cannot close our eyes to the fact that the militant Negro civil rights movement has engendered the intense resentment and opposition of the politically dominant white community of Virginia; litigation assisted by the NAACP has been bitterly fought. In such circumstances, a statute broadly curtailing group activity leading to litigation may easily become a weapon of oppression, however evenhanded its terms appear. Its mere existence could well freeze out of existence all such activity on behalf of the civil rights of Negro citizens." *NAACP v. Button*, 371 U. S. 415, 83 S. Ct. 328, — L. Ed. —.

In the same case the Supreme Court also said:

"The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchallenged delegation of legislative powers, but upon the danger of tolerating in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application."

"When, as in this case, the claim is made that particular legislative inquiries and demands infringe substantially upon First and Fourteenth Amendment associational rights of individuals, the courts are called upon to, and must, determine the permissibility of the challenged action."

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Gibson v. Florida Committee, 372 U. S. 539. The constitutional attack affects many more sections of the law than those sections for violation of which the plaintiffs have been threatened with prosecution. The Court completely disregards this fact. The Court should have weighed the statute in the light of federal standards and decided constitutionality one way or the other. I would hold that some of the provisions of the law are unconstitutional on their face.

II.

IS THE LAW UNCONSTITUTIONAL AS APPLIED?

A. The intervenors, two practicing lawyers in New Orleans, have been active in civil rights cases, representing Negroes in many desegregation cases and representing the American Civil Liberties Union in all sorts of cases. They were arrested. At gunpoint their homes and offices were raided and ransacked by police officers and trustees from the House of Detention acting under the direct supervision of the staff director and the counsel for the State Un-American Activities Committee. The home and office of the director of Southern Conference Educational Fund were also raided. Among the dangerous articles removed was Thoreau's Journal. A truckload of files, membership lists, subscription lists to SCEF's newspaper, correspondence, and records were removed from SCEF's office, destroying its capacity to function. At the time of the arrests, Mr. Pfister, Chairman of the Committee, announced to the press that the raids and arrests resulted from "racial agitation". An able, experienced, and independent-minded district judge of the Criminal District Court for the Parish of Orleans, after hearing evidence, discharged the plaintiffs from arrest on grounds that the arrest warrants were improvidently issued and that there was no reasonable cause for the

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arrests. Shortly thereafter, the Board of Governors of Louisiana State Bar Association adopted a resolution stating, in part:

"The bar has a responsibility for safeguarding the principles which guarantee due process, and it is a deep concern where procedural or substantive aspects of search and seizure harass a member of the bar in the proper exercise of his duties.

"Search and seizure of a file in a lawyer's office, unless due process has been adhered to in the strictest sense, is abhorred since such procedure endangers the exercise of constitutional rights of every lawyer and particularly the rights of the client who has placed his trust in him.

"Specifically, this board would urge that police actions by any arm of government scrupulously conform to the best traditions of justice, which guarantee due process to every citizen." New Orleans Times-Picayune, January 3, 1964.

One of the intervenors is an officer of SCEF. The other lawyer is not even a member; he is threatened with prosecution for failing to register as a member of the National Lawyers' Guild.

The plaintiffs say that the purpose of the Southern Conference Educational Fund is to improve economic, social, and cultural standards in the South in accordance with the highest American institutions and ideals. Its principal activity is to promote civil rights for Negroes by education, correspondence, and publication of a newspaper. The plaintiffs deny any connection with communism or subversion.

As emphasized earlier, the plaintiffs contend that, even if the law is valid on its face, the State has searched their homes and offices, seized their property, arrested them, and

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is about to prosecute them not because they are Communists—they deny any connection with communism—but because their thinking is not compatible with the State's segregation policy. The plaintiffs offer proof in the form of affidavits and witnesses willing to testify.

B. Here again the Court reversed itself. At the first hearing the Court agreed unanimously to receive the evidence at a second hearing. This makes sense. There is no way of deciding whether a law is applied unconstitutionally without hearing evidence as to its application. Evidence was also admissible to show the purpose, operation, and effect of the law. Now, however, the majority has refused to allow the plaintiffs to prove their case by affidavit or by witnesses.

The technical basis for the majority decision was its sustaining of the defendants' motion to dismiss on the ground that "the complaint failed to state a claim upon which relief can be granted". This motion, of course, requires the Court to accept as true all of the allegations in the complaint. In effect the Court held that a citizen has no cause or right of action against the State, to defend federally guaranteed rights and freedoms, when *admittedly* the State is using its Anti-Subversion Law against him, not because he is subversive, but because he advocates civil rights for Negroes. The Court never got around to stating just why the complaint is defective. The fact that the suit is against the State and its officers might affect judicial discretion to withhold the relief prayed for, but it does not affect the plaintiffs' right or cause of action.

Apparently uneasy because of its change of heart and desperately searching for an argument, any argument, the Court came up with a quiddity in keeping with its ratiocinations:

"This court will not gainsay the rule that evidence has been frequently admitted to show un-

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constitutional application of statutes * * * ; but here the very vitals of our constitutional system of government are on the line * * * . If plaintiffs are permitted to introduce evidence * * * respondents would certainly be entitled to follow with evidence * * * . In effect, these litigants, plaintiffs, defendants and intervenors, would indulge in a Star Chamber proceeding with all the 'folderol' and publicly attendant therewith."

C. Disregarding the Star Chamber's "folderol" and publicity, I understand the Court concedes that in some cases evidence has been admitted to show an unconstitutional application of a valid law, but holds that in this case evidence should not be admitted because: (1) the "vitals" of our Constitution are on the line; (2) the plaintiffs should not be allowed to introduce evidence, for that would entitle the defendants to introduce evidence; (3) a hearing should not be public, or at any rate, a hearing should not be held if there is a likelihood of considerable publicity. This rationale illustrates what I mean by the suggestion, respectfully tendered, that perhaps the decision is the result of a visceral reaction.

In an analogous case, a different panel of this Court held that a section of this very law now before us was unconstitutional as it was applied to the National Association for Advancement of Colored People. *State v. NAACP*, E. D. La., 1960, 181 F. Supp. 37, *aff'd* 366 U.S. 293. "[T]he constitutionality of a statute, valid on its face, may be assailed by proof of facts tending to show that the statute as applied to a particular article [or person] is without reason * * * . *United States v. Caroline Products Co.*, 1938, 304 U. S. 144, 58 S. Ct. 778, 82 L. Ed. 1234." As Mr. Justice Holmes has said, "[T]he determination as to [the plaintiffs'] rights turns almost wholly upon the facts to be found * * * . All their constitutional rights, we repeat, depend

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upon what the facts are found to be * * *. They are not to be forbidden to try those facts before a court of their own choosing, if otherwise competent." *Prentis v. Atlantic Coast Line Co.*, 1908, 211 U. S. 210, 29 S. Ct. 67, 53 L. Ed. 150.

All I know about the plaintiffs is what I have read about them in the pleadings and in their written offer of proof. Perhaps the plaintiffs are Communists or subversive; perhaps not. Perhaps the State is being falsely accused; perhaps not. I know this, however: the plaintiffs have a right to sue in the federal district court and fair play entitles them to a day in court to make their proof.

III.

HAS THE LOUISIANA ANTI-SUBVERSION LAW BEEN SUPERSEDED BY CONGRESSIONAL LAWS ON THE SUBJECT?

A. The plaintiffs say that, judging by the criteria established in *Pennsylvania v. Nelson*, 1956, 350 U. S. 497, 76 S. Ct. 477, 100 L. Ed. 640, Congress has superseded the Louisiana law through enactment of the Smith Act of 1940, as amended in 1948, 18 U. S. C. 2385, the Internal Security Act of 1950, 50 U. S. C. 761 *et seq.*, and the Communist Control Act of 1954; 50 U. S. C. 841. *Nelson* established three tests to show congressional intention to supersede state laws on subversion. Applying these tests to this case, the plaintiffs contend, first, that Congress has evidenced this intention by a pervasive, all-embracing program of regulation; second, that the Louisiana law is on a subject in which the national interest is so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject; third, that enforcement of the state law presents a serious conflict with the federal program.

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B. The majority opinion discusses this contention at length although, to have been consistent with its refusal to decide constitutionality, the Court should have refused to discuss supersession. There is no less, and no more, reason to decide one than the other. The Court never comes to grips with the tests *Nelson* establishes. Instead, the Court simply relies on *Uphaus v. Wyman*, 1959, 360 U. S. 72, 79 S. Ct. 1040, 3 L. Ed. 2d 1090, in which the Supreme Court stated that *Nelson* does not prohibit prosecution for sedition against the State itself or prevent the State from protecting itself from sabotage or attempted violence.

C. *Uphaus*, if I may say so, is of small help in our national efforts against Communism but it offers great prospects for disguising unlawful state action against federally protected rights. Nevertheless, the decision may be read as a logical and proper limitation on *Nelson* when the individuals prosecuted have in fact directed their activities against the State (not against the Nation), as in such incidents as riots, malicious mischief, criminal anarchism, or a conspiracy to dynamite the State house. Thus, there is no question as to the validity of the State Criminal Anarchy Law, La. B.S. 14:115. And the Louisiana Supreme Court very properly held that *Nelson* did not foreclose a prosecution under that statute "which does not necessarily involve seditious acts against the federal government". *State v. Cade*, 1963, 244 La. 534, 135 So. 2d 382. In the same decision, however, the Louisiana Supreme Court reaffirmed its holding in *State v. Jenkins*, 1958, 236 La. 300, 107 So. 2d 648.

In the *Jenkins* case the defendant was charged in a bill of information with violating an earlier version of the statute before this Court. The defendant was charged with being a member of the Communist Party knowing it to be a foreign subversive organization as defined in Section 366 of the statute. The prosecution argued that

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Nelson merely foreclosed acts of sedition against the United States alone. The Louisiana Supreme Court rejected the prosecution's position:

"This contention cannot be sustained. A reading of the majority opinion in the *Nelson* case leaves no doubt that the ruling covers the entire area of communist activity, since communism in any form, even though directed against a local government, necessarily violates the Smith Act. Thus, in the case at bar, the charge that the accused has been guilty of subversive activity, in that she was a member of the Communist Party, in its essence includes seditious acts against the government of the United States (even though such violation had not been specifically alleged), for our Communist Control Law (R.S. 14:358-365) like the Federal Communist Control Act, 50 U. S. C. § 841 *et seq.*, contains legislative declarations of fact that the Communist Party is dedicated to the overthrow of all organized government."

Uphaus upheld a contempt conviction of a witness for failure to produce a list of guests at a public summer camp suspected of being a communist front. The New Hampshire legislature had authorized the state attorney general to investigate the extent of subversive activities in the state. As the Supreme Court noted in *Gibson v. Florida Committee*: "[T]he claim to associational privacy in *Uphaus* was held to be 'tenuous at best', 360 U. S. at 80, since the disputed list was already a matter of public record by virtue of a generally applicable New Hampshire law requiring that places of accommodation, including the camp in question, maintain a guest register open to public authorities. Thus, this Court noted that the registration statute 'made public at the inception the association they

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[the guests] now wish to keep private'. 360 U. S. at 81".
373 U. S. at 54.

I have no doubt of the validity of a state legislative investigation into the extent of communist or subversive activities within the state, provided that it is conducted with proper constitutional safeguards and does not impinge on areas preempted by Congress. Whether subversive persons are within a state, whether their activities constitute a threat to the state, and what kind of a threat are of proper concern to a State. Information relative to the subject is necessary for the State "to operate in areas not reached by federal authority". *Texas v. Southeast Texas Chapter*, 358 S. W. 2d 711. Thus *Uphaus* has been held to sanction state legislative inquiries into such local matters as the qualifications and fitness of the state's employees. *Baggett v. Bullett*, W. D. Wash. 1963, 215 F. Supp. 439, 448, app. pending. Here the legislation and the State's acts against the plaintiffs go much further than New Hampshire's investigation in *Uphaus*.

The Louisiana Anti-Subversion Law, unlike the Criminal Anarchy Law, is directed at the same conduct proscribed by Congress. This is evident from the language of the statute. Thus, Section 358 states that the purpose of the legislation is to seek to meet problems created by the "world Communist movement". The preamble declares that "there exists a world Communist movement, directed by the Union of Soviet Socialist Republics and its satellites which has as its objective world control." After describing in some detail the conduct of this "world Communist movement", the law states that "the world Communist movement constitutes a clear and present danger to the citizens of the State of Louisiana. The public good and the general welfare of the citizens of the state require the immediate enactment of this measure." This is precisely the "conduct" which Congress has proscribed in the federal legis-

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lation. The preamble to the Internal Security Act, Title 50, § 781, in almost the identical language utilized by the Louisiana legislature, states that the purpose of the federal legislature is likewise to meet the problem of "conduct" engendered by the "world Communist movement".

In Section 358 the legislature explains the state's concern with the conduct proscribed: "Since the State of Louisiana is the location of many of the nation's most vital military establishments, and since it is a producer of many of the most essential products for national defense, the State of Louisiana is a most probable target for those who seek by force and violence to overthrow constitutional government, and is in immediate danger of Communist espionage, infiltration and sabotage." Thus the legislature's concern is with threats to the national interest and national security, with problems relating to the national defense and, indeed, with international relations.

In the years following the *Nelson* decision not a single state court criminal prosecution for alleged Communist activity has been sustained. See, for example, *Commonwealth v. Gilbert*, 1956, 334 Mass. 71, 134 N. E. 2d 13; *Braden v. Commonwealth*, 1953, 291 S. W. 2d 843 (Kentucky); *Commonwealth v. Hood*, 1956, 334 Mass. 76, 134 N. E. 2d 12; *Commonwealth v. Dolsen*, 1957, 183 Pa. Sup. 339, 132 A. 2d 692. These cases dealt with attempted enforcement of state sedition acts based upon charges that the defendants were engaged in communist activities or were members of communist organizations. Even where the charge was carefully couched in terms of sedition against the state itself, in applying the doctrines enunciated in *Nelson* the state courts uniformly held that charges of communist activity of necessity involved conduct proscribed by the federal legislation. For example, the Supreme Court of Massachusetts, in *Commonwealth v. Gilbert*, pointed out:

"Although these things * * * are specified as pertaining to the overthrow of the government of this

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Commonwealth, it is evident that they are the familiar paraphernalia of communist agitation for the overthrow of government in general, and cannot be directed separately and exclusively against the government of this Commonwealth."

These cases all dealt with criminal prosecutions under state sedition laws. However, the Supreme Court of Michigan, in *Albertson v. Millard*, 1956, 345 Mich. 519; 77 N. W. 2d 104, faced directly the impact of the preemption doctrine upon a state law similar to the Louisiana law before this Court. Following the passage of the federal Internal Security Act several states enacted so-called "Little McCarran Acts", principally among them Alabama, Louisiana, Michigan and Texas. These statutes are attempts to cover the areas governed by the Internal Security Act of 1950 and the Communist Control Act of 1954.

In *Albertson*, the Michigan Supreme Court struck down the Michigan Act on the ground that it was superseded by the existing federal legislation. The Court held that:

"It is not necessary here to indulge in any extended or lengthy detailed comparison of the specific provisions of the Trucks Act with those of the Pennsylvania Act which the United States Supreme Court struck down in its entirety. No question has been raised here pointing to any substantial difference between the two."

Accordingly the Court ruled that:

"The Congress of the United States has occupied the field entered by the Trucks Act to the extent that the federal act superseded the enforceability by the state of the provisions of said act."

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In describing the impact of the Michigan decision upon the Alabama, Louisiana and Texas statutes, a recent commentator has written:

"These statutes provide for registration of communist and subversive organizations, set out penalties for sabotage, and impose various disabilities upon registrants, such as exclusion from the ballot and from public office. Other states require registration but do not impose disabilities upon registrants. It is probable that most of the provisions of these statutes have been superseded by federal legislation. The registration statutes duplicate and enlarge the federal registration scheme. Nearly all of them differ from the federal scheme in one or more respects. Some are accompanied by provisions outlawing the Communist Party. Because of the probable conflict of provisions, there is a much clearer case for preemption with reference to these statutes than there is with respect to the sedition statutes invalidated by the *Nelson* case. *Hines v. Davidowitz*, in which the Federal Alien Registration Act of 1940 was held to supersede a Pennsylvania alien registration statute, provides a close analogy. Moreover, the breadth and thoroughness of the federal scheme make it easier to infer a preemptive intent on the part of Congress. It is not surprising that the Michigan Supreme Court in *Albertson v. Attorney General* held that Michigan's comprehensive communist control law had been superseded by the similar provisions of federal communist control measures." Cramton, Supreme Court and State Power to Deal with Subversion and Loyalty, 43 Minn. L. R. 1025, 1034.

The possibility of subversive activities affecting a state directly provides a basis for *bona fide* investigation and

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state legislation. But prosecutions for sedition based on an accused being a communist or a member of a communist front organization have been preempted by Congress. The scheme of federal regulation of Communist activities is so pervasive, the national interest so dominant, and the possibility of federal-state conflict so great that "the conclusion is inescapable that Congress has intended to occupy [this] field of sedition." *Commonwealth v. Nelson*, at page 504. *Uphaus* reaffirmed *Nelson*; it did not overrule *Nelson*. As long as *Nelson* stands, a State may not define as a crime the same *conduct* Congress proscribes, even though the State's indictment is limited to sedition against the State. There is no doubt as to the intent of the Louisiana legislature; In Section 390 the legislature explains that the statute was necessary because "the federal legislation on this subject is either inadequate in its scope or not being effectively enforced".

IV.

SHOULD THE COURT PROCEED WITH THE TRIAL OF THIS CASE AND, ON A PROPER SHOWING, ENJOIN ENFORCEMENT OF THE LAW?

A. The plaintiffs contend that since the law is unconstitutional as written and applied, that a federal district court has the power to proceed with the trial and, on a proper showing, should enjoin the enforcement of the law. The enforcement of the law, they contend, threatens immediate and irreparable injury to their federally protected constitutional rights. The same argument would apply if the Court should hold that congressional legislation superseded the Louisiana Anti-Subversion Law.

B. The Court's position is unclear. The majority opinion states that the "instant case postulates the basic constitutional issue whether prosecution in the state courts

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... may properly be blocked and effectively thwarted by Federal action". But this is not a constitutional question at all. There is not the slightest doubt as to the constitutional power of a federal court to block prosecution in a state court under an unconstitutional statute. We need look only to the Supremacy Clause to resolve any doubt. And Congress set up the three-judge court for the precise purpose of passing on whether a federal district court *should* enjoin enforcement of a state law. Moreover, whether the state law is a civil or criminal statute is immaterial in terms of constitutionality.

As emphasized, a basic error in the Court's decision is its failure to distinguish between the type of case now before it and the run of the mine suit by a criminal offender asking for relief against unlawful State action. In the Civil Rights Act Congress established a distinct federal cause of action in favor of those whose constitutional rights have been invaded. 42 U.S.C.A. 1981, 1983, 1985. As a matter of law, since such cases involve a federal question, the right existed anyway. The fact that such cases involve a dispute over federally protected freedoms makes the federal court the appropriate forum for settlement of the dispute.

Assuming some latitude for decision under the doctrine of abstention, now developing as nicely as if Dr. Frankenstein were in charge of it, there is still not enough latitude in the doctrine to justify abstention in this case. It is true that generally speaking federal courts are loath to intervene in orderly criminal processes of a State. They do so only in exceptional cases. But here, allegedly, instead of proceeding in an orderly and regular manner, the complaint charges that the State is subverting its Anti-Subversion Law by using it to punish advocates of civil rights.

Exceptional as this situation should be, there are enough cases now, I believe, for one to state that in this

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circuit our courts have established the following principle:

Federal courts are slow in interfering with criminal proceedings in the ordinary case; for example, to take an obvious case, when a defendant argues that state proceedings should be halted while the federal court considers the validity of a search and seizure. But when the complaint alleges that a man is about to suffer irreparable injury from the State for asserting his basic constitutional rights, federal courts are under a duty to hold a hearing on the complaint and to decide the issues. If the state law is unconstitutional as written or applied, or has been superseded by congressional legislation, the Court should enjoin the enforcement of the law, whether the statute is of a civil or a criminal nature.

C. (1) The landmark authority on the power of a federal court to enjoin state enforcement of a law impairing a federal protected right is *Ex Parte Young*, 1908, 209 U. S. 123, 28 S. Ct. 441, 52 L. Ed. 714, although recognition of such constitutional power goes back at least to *Osborn v. Bank of the United States*, 1824, 9 Wheat. 738, 6 L. Ed. 204. In *Ex Parte Young* the Supreme Court said:

“[I]ndividuals who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence proceedings, *either of a civil or criminal nature*, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action.”

As noted in a recent treatise, “The effect of *Ex Parte Young* is * * * to subject the states to the restrictions of

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the United States Constitution which they might otherwise be able safely to ignore. . . . [I]n perspective the doctrine of *Ex Parte Young* seems indispensable to the establishment of constitutional government and the rule of law." Wright, Federal Courts § 48 (1963).

Jordan v. Hutcheson, 4th Cir. 1963, 323 F. 2d 597 is instructive here. In that case three Negro attorneys sued a committee of the Virginia State Legislature, its Chairman, counsel, and a process server of the City of Norfolk. The complaint alleged that under the guise of conducting lawful investigations but actually for the purpose of discouraging Negroes from asserting their civil rights in the courts, the defendants harassed and attempted to intimidate the plaintiffs, raided their offices, and published statements (as in the instant case) naming the plaintiffs as law violators. In a thorough, carefully documented opinion, which relies on a great many decisions of this circuit, the Fourth Circuit reversed the district court which had held that the complaint failed to state a cause of action. Judge Bell, for a unanimous court, said:

"The extent to which the state through its legislative power may intrude upon a citizen's rights becomes a matter for the consideration of the federal courts when such conduct invades the citizen's constitutional privileges. Whereupon the federal courts are commanded to act under the self-executing provisions of the Fourteenth Amendment. We submit it would be impracticable to test the constitutionality of the state's conduct without considering its purpose. . . . *The concept of federalism: i.e., federal respect for state institutions, will not be permitted to shield an invasion of the citizen's constitutional rights.* Baker v. Carr, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962). Certainly this

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principle has not shielded the activities of the executive and judicial branches of the state from interdiction when constitutional rights are involved. * * * Although the federal courts will recognize and respect the state's right to exercise through its legislature broad investigatory powers, nevertheless these powers are not unlimited and it remains the duty of the federal courts to protect the individual's constitutional rights from invasion either by state action or under color thereof. *Especially is this true in the sensitive areas of First Amendment rights and racial discrimination.* Where there exists the clear possibility of an immediate and irreparable injury to such rights by state legislative action the federal courts have exercised their equitable powers including the declaratory judgment and the injunction." (Emphasis added.)

(2) Courts in this circuit have repeatedly enjoined the enforcement of state laws where enforcement infringed on federal rights. They have done so when the statute was unconstitutional on its face and when it was unconstitutional as applied. They have issued the injunction both before and after criminal prosecutions have been started.

In a strikingly analogous situation, in *Bush v. Orleans Parish School Board*, E. D. La. 1961, 194 F. Supp. 182, *aff'd* — U. S. —, a three-judge court, met directly the question of enjoining state court criminal proceedings and the enforcement of criminal statutes. Louisiana had enacted certain criminal laws designed in their operation, *but not on their face*, to deter Negro citizens from exercising their right to insist upon the desegregation of public education. The statutes created a new crime, "bribery of parents of children", and a companion crime, "intimidation and interfer-

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ence in the operation of schools". As in the instant case, the Attorney General of the State argued that Section 2283 and the policy of comity prohibited the federal court from enjoining these criminal prosecutions. The Court, enjoining a large number of state officers from the Governor on down, said.

"True, 'it is a familiar rule that courts of equity do not ordinarily restrain criminal prosecution' *Douglas v. Jeannette*. * * * But this rule cannot be applied mechanically. *NAACP v. Bennett*, cf. *Doud v. Hodge*, 350 U. S. 485. Special circumstances will sometimes compel a federal court to act. *Truax v. Reich* 239 U. S. 33; *Pierce v. Society*, 268 U. S. 510; *Hague v. CIO*, 307 U. S. 496. * * * This is such a case. * * * The challenged statutes are not ordinary criminal provisions. * * * Placed in context, their mission is all too clear. These are the invidious weapons of a state administration dedicated to scuttling the modest program of desegregation which has been initiated in Orleans Parish. * * * Constitutionally unable to require racial segregation in the public schools, arrested in its plan to close the integrated schools, and unsuccessful in its boycott of these schools by other means, the State has now marshalled the full force of its criminal law to enforce its social philosophy through the policeman's club." 194 F. Supp. at 185.

In the most recent decision in point, *Aelony v. Pace*, Slip Opinion, Nov. 1, 1963, 32 L. W. 2215; Judge Tuttle, for a three-judge court held that a Georgia "insurrection statute" and an "unlawful assembly statute" were unconstitutional and granted an injunction forbidding prosecution of the plaintiffs under these laws. I point out that a state "insurrection" statute is preeminently a law en-

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abling a State to protect itself against what the majority here calls the State's "basic right of self-preservation".

Browder v. Gayle, M. D. Ala. 1956, 142 F. Supp. 707, *aff'd per curiam* 352 U. S. 903, is a leading case. Judge Rives, for the Court, held:

"The defendants, * * * [urge that] the Federal court * * * should, in its discretion as a court of equity, and for reasons of comity, decline to exercise such jurisdiction until the State courts have ruled on the construction and validity of the statutes and ordinances. The short answer is, that doctrine has no application where the plaintiffs complain that they are being deprived of constitutional civil rights, for the protection of which the Federal Courts have a responsibility as heavy as that which rests on the State courts."

Discussing *Browder v. Gayle* a panel of the Fifth Circuit (Chief Judge Hutcheson and Judges Tuttle and Jones) said, in a *per curiam* opinion:

"That case disposes of the contention that the federal court should not grant an injunction against the application or enforcement of a state statute, the violation of which carries criminal sanctions. This is not such a case as requires the withholding of federal court action for reason of comity, since for the protection of civil rights of the kind asserted Congress has created a separate and distinct federal cause of action. 42 U. S. C. A. § 1983. Whatever may be the rule as to other threatend prosecutions, the Supreme Court in a case presenting an identical factual issue affirmed the judgment of the trial court in the *Browder* case in which the same contention was advanced. To the extent that this is inconsistent with *Douglas v. City of Jeannette, Pa.*, 319 U. S. 157,

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63 S. Ct. 877, 87 L. Ed. 1324, we must consider the earlier case modified." *Morrison v. Davis*, 5 Cir. 1958, 252 F. 2d 102, at 103.

In *United States v. Wood*, 5 Cir. 1961, 295 F. 2d 772 a Registrar of Voters in a Mississippi County where there were no Negroes registered, without provocation, pulled out his revolver and ordered a Negro to leave his office. As he was leaving, the Registrar struck him on the back of his head with the revolver. The Negro had conducted a school for voting registration and had encouraged Negroes to register. He was charged with disturbing the peace. The Court of Appeals for this Circuit enjoined his prosecution not just on the violation of his rights but on the ground that the prosecution, "regardless of outcome, will effectively intimidate Negroes in the exercise of their right to vote". 295 F. 2d at 777. The Court pointed out that the Civil Rights Act, 42 U. S. C. A. 1971 expressly authorized injunctive relief against state criminal court proceedings and thus falls squarely within the stated exception to Section 2283. See also *Cooper v. Hutchinson*, 3rd Cir. 1958, 184 F. 2d 119, holding that 42 U. S. C. A. 1983 authorizes an injunction against state court proceedings as an exception to Section 2283.

In *City of Houston v. Dobbs Co.*, 5th Cir. 1956, 232 F. 2d 428, the Court affirmed the granting of permanent injunctive relief against the enforcement of a criminal ordinance of the City of Houston. Judge Tuttle, for the Court, said:

"Appellant attacks the jurisdiction of the Court on the well recognized principle that courts will not normally enjoin the enforcement of criminal statutes or ordinances whose constitutionality is challenged. There is an equally well recognized exception to this rule as stated in the case cited by the appellant in

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its brief, *Spielman Motor Sales Co. v. Dodge*, 295 U. S. 89 where the Court says, 'to justify such interference there must be exceptional circumstances and a clear showing that an injunction is necessary to afford adequate protection of constitutional rights. The case before us presents a clear illustration of such exceptional circumstances as would make the general rule inapplicable'.

See also *Denton v. City of Carrollton, Georgia*, 5 Cir. 1956, 235 F. 2d 481.

Moreover, as the Court held in *Bailey v. Patterson*, 5 Cir. 1963, 323 F. 2d 201, "The law is crystal clear that they were not required to subject themselves to arrest in order to maintain this suit". In *McNeese v. Board of Education*, 373 U. S. 668, the Supreme Court reviewed the purposes of Section 1983. The Court found that these were its purposes: to override certain kinds of state laws; to provide a remedy where state law was inadequate; to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice; and to provide a remedy in the federal courts supplementary to any remedy any state might have. The Supreme Court said: "We would defeat those purposes if we held that assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in a state court". 373 U. S. at 672.

3 None of the decisions relied on in the majority opinion, present the all-important issue raised here that the State was subverting its laws in order to maintain its segregation policy."

In *Watson v. Buck*, 1940, 313 U. S. 387, 401, the Court stated that "exceptional circumstances" and "great and immediate" danger were not shown. *Stefanelli v. Minard*, 1951, 342 U. S. 117, 72 S. Ct. 118, 96 L. Ed. 138, was a run of the mine case in which a defendant asked that a federal

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court intervene in a state proceeding by suppressing the use of evidence allegedly secured by an unlawful search and seizure. The Court properly refused to interfere, particularly influenced by the consideration that it would be "interven[ing] piecemeal to try collateral issues". 342 U. S. at 123. In *Cleary v. Bolger*, 1963, 371 U. S. 392, 83 S. Ct. 385, 9 L. Ed. 2d 390, the Court held that federal courts would not enjoin New York police officers from testifying where there was no evidence of an attempt to avoid federal requirements. The majority opinion cites *Douglas v. City of Jeannette, Pa.*, 319 U. S. 157, 63 S. Ct. 877, 87 L. Ed. 1324, but as stated in *Morrison v. Davis*, 1958, 252 F. 2d 102, 103, the Fifth Circuit gives that case a narrow reading in civil rights cases.

In short, the many decisions in this circuit in which the Court has firmly grasped the nettle argue strongly against the Court's too tender handling of the case.

V.

Chairman Pfister is quoted as saying that the plaintiffs were racial agitators. If that is true, and if the plaintiffs' modest agitation by mail was motivated only by the plaintiffs' interest in civil rights for Negroes, then, once again, as in *Bush v. Orleans Parish School Board*, the State has "marshalled the full force of its criminal law to enforce its social philosophy through the policeman's club". Under any rational concept of federalism the federal district court has the primary responsibility and the duty to determine whether a state court proceeding is or is not a disguised effort to maintain the State's unyielding policy of segregation at the expense of the individual citizen's federally guaranteed rights and freedoms.

This Court should get on with its work.

APPENDIX C

Statutes Involved

LOUISIANA REVISED STATUTES

14:358 through 14:388

Sec. 358. SUBVERSIVE ACTIVITIES AND COMMUNIST CONTROL LAW; DECLARATION OF PUBLIC POLICY

In the interpretation and application of R. S. 14:358 through R. S. 14:374 the public policy of this state is declared to be as follows:

There exists a world communist movement, directed by the Union of Soviet Socialist Republics and its satellites, which has as its declared objective world control. Such world control is to be brought about by aggression, force and violence, and is to be accomplished in large by infiltrating tactics involving the use of fraud, espionage, sabotage, infiltration, propaganda, terrorism and treachery. Since the state of Louisiana is the location of many of the nation's most vital military establishments, and since it is a producer of many of the most essential products for national defense, the state of Louisiana is a most probable target for those who seek by force and violence to overthrow constitutional government, and is in imminent danger of communist espionage, infiltration and sabotage. Communist control of a country is characterized by an absolute denial of the right of self-government and by the abolition of those personal liberties which are cherished and held sacred in the state of Louisiana and in the United States of America. The world communist movement constitutes a clear and present danger to the citizens of the state of Louisiana. The public good, and the general welfare of the citizens of this state require the immediate enactment of this measure. Acts 1962, No. 270, Sec. 1.

*Appendix C—Statutes Involved***SEC. 359. DEFINITIONS**

(1) A "Communist" means a person who is a member of the Communist Party or is proven to be substantially under the discipline and control of the International Communist Conspiracy.

(2) The "Communist Party" means the Communist Party, U. S. A., or any of its direct successors and shall include any other organization which is directed, dominated or controlled by the Soviet Union, by any of its satellite countries or by the government of any other communist country; or any organization which in any manner advocates or acts to further the success of the program of world domination of the international communist conspiracy.

(3) "Communist Front Organization" shall, for the purpose of this act include any communist action organization, communist front organization, communist infiltrated organization or communist controlled organization and the fact that an organization has been officially cited or identified by the Attorney General of the United States, the Subversive Activities Control Board of the United States or any Committee or Subcommittee of the United States Congress as a communist organization, a communist action organization, a communist front organization, a communist infiltrated organization or has been in any other way officially cited or identified by any of these aforementioned authorities as a communist controlled organization, shall be considered presumptive evidence of the factual status of any such organization.

(4) "Organization" means an organization, corporation, company, partnership association, trust, foundation, fund, club, society, committee, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

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(5) "Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy, or to assist in the overthrow or destruction of the constitutional form of the government of the state of Louisiana, or of any political subdivision thereof by revolution, force, violence or other unlawful means, or any other organization which seeks by unconstitutional or illegal means to overthrow or destroy the government of the state of Louisiana or any political subdivision thereof and to establish in place thereof any form of government not responsible to the people of the state of Louisiana under the Constitution of the state of Louisiana.

(6) "Foreign subversive organization" means any organization, directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy, or to assist in the overthrow or destruction of the constitutional form of the government of the state of Louisiana, or of any political subdivision thereof to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual.

(7) "Foreign Government" means the government of any country, nation or group of nations other than the government of the United States of America or one of the states thereof.

(8) "Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commis-

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sion of any act intended to overthrow, destroy, or to assist in the overthrow or destruction of the constitutional form of the government of the state of Louisiana, or any political subdivision thereof by revolution, force, violence or other unlawful means; or who is a member of a subversive organization or a foreign subversive organization. Acts 1962, No. 270, Sec. 1.

Sec. 360. REGISTRATION OF COMMUNISTS

A. Each person remaining in this state for as many as five consecutive days after July 30, 1962, who is a communist or is knowingly a member of a communist front organization, shall register with the department of public safety of the state of Louisiana on or before the fifth consecutive day that such person remains in this state; and, so long as he remains in this state, shall register annually with said department between the first and fifteenth day of January.

B. Registration shall be under oath and shall set forth the name (including any assumed name used or in use), address, business occupation, purpose of presence in the state of Louisiana, sources of income, place of birth, places of former residence, and features of identification, including fingerprints of the registrant; organizations of which registrant is a member; and any other information requested by the department of public safety which is reasonably relevant to the purpose of R. S. 14:358 through R. S. 14:374.

C. Under order of any court of record, the registration records shall be open for inspection by any person in whose favor such order is granted; and the record shall at all times, without the need for a court order, be open for inspection by any law enforcement officer of this state, of the United States or of any state or territory of the United States. At the discretion of the department of public

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safety, these records may also be open for inspection by the general public or by any member thereof. Acts 1962, No. 270, Sec. 1.

Sec. 361. COMMUNIST PARTY NOT TO APPEAR ON ELECTION BALLOTS

The name of any communist or of any nominee of the communist party shall not be printed upon any ballot used in any primary or general election in the state or in any political subdivision thereof. Acts 1962, No. 270, Sec. 1.

Sec. 362. PUBLIC OFFICE; DISQUALIFICATION OF COMMUNISTS

No person may hold any non-elective position, job or office for the state of Louisiana, or any political subdivision thereof, where the remuneration of said position, job or office is paid in whole or in part by public moneys or funds of the state of Louisiana, or of any political subdivision thereof, where the evidence shows such person to be a communist or a knowing member of a communist front organization. Acts 1962, No. 270, Sec. 1.

Sec. 363. ENFORCEMENT

The attorney general of the state of Louisiana, all district and parish attorneys, the department of public safety, and all law enforcement officers of this state shall each be charged with the duty of enforcing the provisions of R. S. 14:358 through R. S. 14:374. Acts 1962, No. 270, Sec. 1.

Sec. 364. ACTS PROHIBITED

It shall be a felony for any person knowingly and wilfully to

(1) Commit, attempt to commit, or aid in the commission of any act intended to overthrow or destroy, or to

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assist in the overthrow or destruction of the constitutional form of government of the state of Louisiana, or any political subdivision thereof, by revolution, force, violence, or other unlawful means, or

(2) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the state of Louisiana, or of any political subdivision thereof, or

(3) Conspire with one or more persons to commit any such act;

(4) Assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(5) Destroy any books, records, or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such; or

(6) To become or to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization; or

(7) Fail to register as required in R. S. 14:360 or to make any registration which contains any material false statement or omission. Acts 1962, No. 270, Sec. 1.

Sec. 365. PENALTIES

Any person convicted of violating any of the provisions of R. S. 14:364 shall be fined not more than ten thousand dollars or imprisoned at hard labor for not more than ten years, or both. Acts 1962, No. 270, Sec. 1.

*Appendix C—Statutes Involved***Sec. 366. ADDITIONAL PENALTIES**

Any person convicted by a court of competent jurisdiction of violating any of the provisions of R. S. 14:358 through 14:374 in addition to all other penalties therein provided shall from the date of conviction be barred from:

(1) Holding any office, elective or appointive, or any other position of profit or trust in or employment by the government of the state of Louisiana or of any agency thereof or of any parish, municipal corporation or other political subdivision of said state;

(2) Filing or offering for election to any public office in the state of Louisiana; or

(3) Voting in any election in this state. Acts 1962, No. 270, Sec. 1.

Sec. 367. DISSOLUTION OF SUBVERSIVE ORGANIZATIONS; FORFEITURE OF CHARTER; SEIZURE OF BOOKS AND RECORDS

It shall be unlawful for any subversive organization or foreign subversive organizations to exist or function in the state of Louisiana and any organization which by a court of competent jurisdiction is found to have violated the provisions of this Section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of Louisiana a finding by a court of competent jurisdiction that it has violated the provisions of this Section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited, and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this Section shall be seized by and for the state of Louisiana, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over

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to the department of public safety of Louisiana. Acts 1962, No. 270, Sec. 1.

Sec. 368. JUDGE'S CHARGE TO GRAND JURY

The judge of any court exercising general criminal jurisdiction, when in his discretion it appears appropriate, or when informed by the attorney general or district attorney that there is information or evidence of violations of the provisions of this act to be considered by the grand jury, shall charge the grand jury to inquire into violations of R. S. 14:358 through 14:374 for the purpose of proper action, and further to inquire generally into the purposes, processes, and activities and any other matters affecting communism or any related or other subversive organizations, associations, groups or persons. Acts 1962, No. 270, Sec. 1.

Sec. 369. INELIGIBILITY OF SUBVERSIVE PERSON FOR PUBLIC OFFICE OR EMPLOYMENT

No subversive person, as defined in R. S. 14:359, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government of, or in the administration of the business of this state, or of any parish, municipality, or other political subdivision of this state. Acts 1962, No. 270, Sec. 1.

Sec. 370. SCREENING OF PROSPECTIVE PUBLIC OFFICIALS AND EMPLOYEES

Every person and every board, commission, council, department, court or other agency of the state of Louisiana or any political subdivision thereof, who appoints, employs or supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain,

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before any person, including teachers and other employees of any public educational institution in this state, is appointed or employed, that he is not a subversive person, and that there are no reasonable grounds to believe such person is a subversive person. In the event reasonable grounds exist, he shall not be appointed or employed. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written affidavit containing answers to such inquiries as may be reasonably material. Acts 1962, No. 270, Sec. 1.

Sec. 371. EXCEPTIONS TO SCREENING REQUIREMENTS

The inquiries prescribed in R. S. 14:370, other than the written statement to be executed by an applicant for employment, shall not be required as a pre-requisite to the employment of any persons in the classification of laborers in any case in which the employing authority shall in his or its discretion determine, and by rule or regulation specify the reason why the nature of the work to be performed is such that employment of persons as to whom there may be reasonable grounds to believe that they are subversive persons as defined in R. S. 14:359, will not be dangerous to the health or security of the citizens or the security of the government of the state of Louisiana, or any political subdivision thereof. Acts 1962, No. 270, Sec. 1.

Sec. 372. SUFFICIENCY OF GROUNDS FOR DISCHARGE FROM OFFICE OR POSITION; EFFECT OF CIVIL SERVICE LAWS

Reasonable grounds to believe that any person is a subversive person, as defined in R.S. 14:359, shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any parish, municipality or other political subdivision of this state, or any agency thereof. The appropriate civil service com-

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mission or board shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in R.S. 14:359, shall be accorded notice and opportunity to be heard, in accordance with the procedures prescribed by law for discharges for other reasons. Every person and every board, commission, council, department, or other agency of the state of Louisiana or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in R.S. 14:359, after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of R.S. 14:358-14:374 shall promptly report to the department of public safety the fact of and the circumstances surrounding such discharge. Acts 1962, No. 270, Sec. 1.

Sec. 373. CANDIDATES FOR PUBLIC OFFICE; FILING OF NON-SUBVERSIVE AFFIDAVITS

No persons shall become a candidate nor shall be certified by any political party as a candidate for election to any public office created by the constitution or laws of this state unless such candidate or certification by the political party shall have attached to the qualifying papers, the nominating petition or nominating papers filed with the appropriate party committee of this state or the Secretary of State, whichever the case may be, a sworn affidavit that the candidate is not and never has been a subversive person as defined in R.S. 14:359. No qualification of candidates, nominating petition or nominating papers for such office shall be received for filing by the official aforesaid unless the same are accompanied by the affidavit, and there shall not be entered upon any ballot or voting machine at any election the name of any person who has failed or re-

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fused to make the required affidavit. Acts 1962, No. 270, Sec. 1.

Sec. 374. CITATION OF SUBVERSIVE ACTIVITIES AND COMMUNIST CONTROL LAW

R.S. 14:358 through R.S. 14:374 may be cited as the Subversive Activities and Communist Control Law. Acts 1962, No. 270, Sec. 1.

Secs. 14:375, 14:376. DELETED

Secs. 14:377-14:380. REPEALED. ACTS 1962, No. 270, SEC. 1

Sec. 385. ORGANIZATIONS ENGAGED IN SOCIAL, EDUCATIONAL OR POLITICAL ACTIVITIES; COMMUNIST AFFILIATIONS PROHIBITED

Non-trading corporations, partnerships and associations of persons operating in the state of Louisiana and engaged in social, educational or political activities are prohibited from being affiliated with any foreign or out of state non-trading corporations, partnerships or associations of persons, any of the officers or members of the board of directors of which are members of Communist, Communist-front or subversive organizations, as cited by the House of Congress un-American Activities Committee, or the United States Attorney. Reports or information from the files of the Committee on un-American Activities of the U. S. House of Representatives shall constitute prima facie evidence of such membership in said organizations. Acts 1958, No. 260, Sec. 1.

Sec. 386. AFFIDAVITS

As a condition precedent to being authorized to operate or conduct any activities in the state of Louisiana, every non-trading corporation, partnership or association of per-

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sons engaged in social, educational or political activities, affiliated with any similar non-trading corporation, partnership or association of persons, chartered, created or operating under the laws of any other state, shall file with the secretary of state yearly, on or before December 31, an affidavit attesting to the fact that none of the officers of such out of state or foreign corporation, partnership or association of persons with which it is affiliated, is a member of any such organization cited by the House of Congress un-American Activities Committee, or the United States Attorney General, as Communist, Communist-front or subversive. Acts 1958, No. 260, Sec. 2.

Sec. 387. FAILURE TO FILE AFFIDAVIT; PENALTY

Failure to file the affidavit required by R.S. 14:386 shall constitute a misdemeanor, and the officers and members of such non-trading corporation, partnership or association of persons operating in this state and affiliated with such out of state or foreign organizations, failing to file such affidavit, shall be deemed guilty of a misdemeanor and upon conviction by a court of competent jurisdiction shall be fined \$100.00 and imprisoned 30 days in the parish jail. Acts 1958, No. 260, Sec. 3.

Sec. 388. FALSE STATEMENTS IN AFFIDAVIT AS PERJURY

Any false statement under oath contained in the affidavit required by R.S. 14:386 filed with the secretary of state shall constitute perjury and shall be punished as provided by R.S. 14:123. Acts 1958, No. 260, Sec. 4.

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LOUISIANA REVISED STATUTES
14:390 through 14:390.5

Sec. 390. DECLARATION OF PUBLIC POLICY

In the interpretation and application of R.S. 14:390 and the Sub-sections thereof, and as a result of certain evidence having been presented to the Joint Legislative Committee on Un-American Activities of this Legislature, the public policy of this state is declared to be as follows:

There exists a clear, present and distinct danger to the security of the state of Louisiana and the well-being and security of the citizens of Louisiana arising from the infiltration of a significant amount of communist propaganda into the state. In addition, this state is a stopping place or "way station" for sizeable shipments of dangerous communist propaganda to the rest of the United States and to many foreign countries.

The danger of communist propaganda lies not in its being "different" in the philosophy it expresses from the philosophy generally held in this state and nation, but instead in the fact that it is a specific tool or weapon used by the communists for the express purpose of bringing about the forcible total destruction or subjugation of this state and nation and the total eradication of the philosophy of freedom upon which this state and nation were founded. "Words are bullets" and the communists know it and use them so. Whatever guarantees of sovereignty and freedom are enjoyed by this state and its citizens are certain to vanish if the United States of America is destroyed or taken over by propaganda infiltration or otherwise against the United States is and should rightly be considered an attack upon or clear and present danger to the state of Louisiana and its citizens. Such attacks should therefore be the subject of concurrent jurisdiction through remedial legislation such as is now in effect on both the state and

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federal level concerning such dangers as the narcotics traffic, bank robbery, kidnapping, etc. We hereby declare that the danger of communist propaganda infiltration is even greater than the danger from narcotics, pornographic literature, switch blade knives, burglar tools or illicit alcohol in dry jurisdictions, all of which have been the subject of valid statutory regulation by the States within the constitutional framework. The federal legislation on this subject matter is either inadequate in its scope, or not being effectively enforced, as much communistic propaganda material unlabeled and unidentified as such, is in fact entering the state of Louisiana at this time.

We further declare that communist propaganda, properly identified in terms similar to those used in the Foreign Agents Registration Act of the United States, is hereby identified as illicit dangerous contraband material. We further declare that certain exemptions hereinafter provided are for the purpose of allowing bona fide students of foreign languages, foreign affairs or foreign political systems, other interested individuals, and also bona fide educational institutions, to obtain this contraband upon specifically requesting its delivery for the purpose of person or institutional use in the due course of the educational process. We do not believe that the possession or use of such material by knowing and informed individuals for their personal use is any significant danger, and in fact it might be of some benefit in informing such individuals of the cynical and insidious nature of the communist party line. In view of these facts and so that any user of such materials will be adequately forewarned, we declare that all such material in any way entering the state of Louisiana should be required to be clearly labeled as communist propaganda as hereinafter provided. Added Acts 1962, No. 245, Sec. 1.

*Appendix C—Statutes Involved***Sec. 390.1 DEFINITION OF COMMUNIST PROPAGANDA**

(1) "Communist propaganda" means any oral, visual, graphic, written, pictorial or other communication which is issued, prepared, printed, procured, distributed or disseminated by the Soviet Union, any of its satellite countries, or by the government of any other communist country or any agent of the Soviet Union, its satellite countries or any other communist country, wherever located, or by any communist organization, communist action organization, communist front organization, communist infiltrated organization, or communist controlled organization or by any agent of any such organization, which communication or material from any of the above listed sources is

(a) reasonably adopted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any way influence a recipient or any section of the public with reference to the political or public interests, policies or relations of a government of a foreign country or a foreign political party, or promote in the United States or the state of Louisiana, any attitude or state of mind that tends to undermine the determination of any citizen of the United States or of any of the various states to uphold and defend the Constitution of the United States or the constitutions of the respective states, or tends to create or encourage disrespect for duly constituted legal authority, either federal or state, or

(b) which advocates, advises, instigates or promotes any racial, social, political or religious disorder, civil riot, or other conflict involving the use of force or violence in the United States, the state of Louisiana or any other American republic, or the overthrow of any government or political subdivision of the United States, the state of

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Louisiana or any other American republic by any means involving the use of force or violence.

(2) For the purposes of R.S. 14:390-14:390.8, the fact that an organization has been officially cited or identified by the attorney general of the United States, the subversive activities control board of the United States or any committee of the United States Congress as a communist organization, a communist action organization, a communist front organization or a communist infiltrated organization or has been in any other way officially cited or identified by any of these aforementioned authorities as a communist controlled organization, shall be considered presumptive evidence of the factual status of any such organization. Added Acts 1962, No. 245 Sec. 1.

Sec. 390.2 ACTS PROHIBITED

It shall be a felony for any person to knowingly, willfully and intentionally deliver, distribute, disseminate or store communist propaganda in the state of Louisiana except under the specific exemptions hereinafter provided. Added Acts 1962, No. 345, Sec. 1.

Sec. 390.3 LEGITIMATE PROCUREMENT OF CONTRABAND

Bona fide students of foreign languages, foreign affairs, or foreign political systems, other interested individuals, and also bona fide officially accredited educational institutions may obtain communist propaganda and have the same legally delivered to them within the state of Louisiana upon specifically requesting the delivery of the same for the purpose of personal or institutional use in due course of the educational process. All such communist propaganda legally entering this state under this exemption shall be clearly and legibly labeled on both the front and back cover thereof, or on the front if not covered, with the words

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“Communist Propaganda” printed or stamped conspicuously in red ink, and failure to so label said material shall constitute a violation of R.S. 14:390-14:390.8 on the part of the sender or distributor thereof, the violation to be considered to take place at the point of actual delivery to the ultimate user who requested the material. Added Acts 1962, No. 245, Sec. 1.

Sec. 390.4 VENUE

Violations of R.S. 14:390-14:390.8 are considered to take place at the location where the prohibited contraband material is found, either stored in bulk or placed in the hands of the ultimate user. Added Acts 1962, No. 245, Sec. 1.

Sec. 390.5 WAREHOUSING AND STORAGE

It is the duty of the sheriffs of the respective parishes, upon the finding of any bulk storage of any communist propaganda, to enter upon the premises where the material is found, clear the premises of all human occupants, and padlock the premises until judicially ordered to reopen them. The owner of any padlocked premises may, upon application to the district court of proper jurisdiction and upon showing the court that the premises can be immediately cleared of the prohibited contraband material, obtain an order from the court to the sheriff, authorizing him to supervise the removal of the contraband by the owner of the premises and to re-open the premises thereafter. Added Acts 1962, No. 245, Sec. 1.

Sec. 390.6 DESTRUCTION OF CONTRABAND

All communist propaganda discovered in the state of Louisiana in violation of R.S. 14:390-14:390.8 shall be seized and after proper identification and upon summary order of

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the district court of proper jurisdiction, destroyed, unless needed for official purposes. Added Acts 1962, No. 245, Sec. 1.

Sec. 390.7 PENALTIES

Any person who violates any of the provisions of R. S. 14:390-14:390.6 shall be fined not more than ten thousand dollars or imprisoned at hard labor for not more than six years, or both. Added Acts 1962, No. 245, Sec. 1.

Sec. 390.8 SHORT TITLE

R.S. 14:390 through 14:390.7 may be cited as the "Communist Propaganda Control Law." Added Acts 1962, No. 245, Sec. 1.

APPENDIX D**Indictments Returned Against Appellants Dombrowski,
Smith and Waltzer****Indictment of Benjamin E. Smith****PARISH OF ORLEANS****CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS****THE STATE OF LOUISIANA } ss.:**

THE GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, **PRESENT** That one **BENJAMIN E. SMITH** late of the Parish of Orleans on the 22nd day of January in the year of our Lord, one thousand, nine hundred sixty-four with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans while knowingly and wilfully being a member of a Communist front organization known as the National Lawyers Guild, which said organization has been cited by committees and sub-committees of the United States Congress as a Communist front organization on March 29, 1944, September 21, 1950, and on April 23, 1956, and while at the same time remaining continuously within the boundaries of the State of Louisiana five consecutive days immediately prior to and on the date of the 22nd day of January 1964, and that during such time he did knowingly and wilfully fail to register with the Department of Public Safety of the State of Louisiana as a member of a Communist front organization on or before the fifth day that he remained continuously in this State, all as required by Louisiana Revised Statutes Title 14, Section 360.

*Appendix D***SECOND COUNT**

AND NOW THE GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, **PRESENT** That one **BENJAMIN E. SMITH** late of the Parish of Orleans on the 22nd day of January in the year of our Lord, one thousand, nine hundred sixty-four with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans knowingly and wilfully participate in the management, to wit, act as Treasurer of a subversive organization, to wit, the Southern Conference Educational Fund, said organization being essentially the same as the Southern Conference for Human Welfare, which said organization has been cited by committees of the United States Congress as a Communist front organization on March 29, 1944, and June 16, 1947, while knowing the said Southern Conference Educational Fund to be a subversive organization.

THIRD COUNT

AND NOW THE SAID GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of said State, upon their oath, **PRESENT** That one **BENJAMIN E. SMITH** late of the Parish of Orleans on the 22nd day of January in the year of our Lord, one thousand, nine hundred sixty-four with force and arms in the Parish of Orleans aforesaid, and with the jurisdiction of the Criminal District Court for the Parish of Orleans while knowingly and wilfully being a member of a Communist front organization known as the Southern Conference Educational Fund, which said organization is essentially the same as the Southern Conference for Human Welfare, which said

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Southern Conference for Human Welfare having been cited by the committees of the United States Congress as a Communist front organization on March 29, 1944, and on June 16, 1947, while at the same time remaining within the boundaries of the State of Louisiana five consecutive days immediately prior to and on the date of the 22nd day of January 1964, and that during such time he did knowingly and willfully fail to register with the Department of Public Safety of the State of Louisiana as a member of a Communist front organization on or before the fifth day that he remained in this State, all as required by Louisiana Revised Statutes, Title 14, Section 360, contrary to the form of Statute of the State of Louisiana in such cases made and provided and against the peace and dignity of the same.

.....
 District Attorney for the
 Parish of Orleans.

Indictment of James A. Dombrowski

PARISH OF ORLEANS

CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

THE STATE OF LOUISIANA } ss.:

THE GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT That one JAMES A. DOMBROWSKI late of the Parish of Orleans on the 25th day of January in the year of our Lord, one thousand, nine hundred sixty-four

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with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans knowingly and wilfully participate in the management, to wit, act as Executive Director of a subversive organization, to wit, the Southern Conference Educational Fund, said organization being essentially the same as the Southern Conference for Human Welfare, which said organization has been cited by committees of the United States Congress as a Communist front organization on March 29, 1944, and June 16, 1947, while knowing the said Southern Conference Educational Fund to be a subversive organization.

SECOND COUNT

AND NOW THE SAID GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT That one JAMES A. DOMBROWSKI late of the Parish of Orleans on the 25th day of January in the year of our Lord, one thousand, nine hundred sixty-four with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans while knowingly and wilfully being a member of a Communist front organization known as the Southern Conference Educational Fund, which said organization is essentially the same as the Southern Conference for Human Welfare, which said Southern Conference for Human Welfare having been cited by the committees of the United States Congress as a Communist front organization on March 29, 1944, and on June 16, 1947; while at the same time remaining within the boundaries of the State of Louisiana five consecutive days immediately prior to and on the date of the 25th day January 1964, and that during such time he did knowingly and wilfully fail to register with the Department of Public

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Safety of the State of Louisiana as a member of a Communist front organization on or before the fifth day that he remained in this State, all as required by Louisiana Revised Statutes Title 14, Section 360, contrary to the form of Statute of the State of Louisiana in such cases made and provided and against the peace and dignity of the same.

.....
District Attorney for the
Parish of Orleans.

Indictment of Bruce Waltzer

PARISH OF ORLEANS

CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

THE STATE OF LOUISIANA } ss.:

THE GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT That one BRUCE WALTZER late of the Parish of Orleans on the 22nd day of January in the year of our Lord, one thousand, nine hundred sixty-four with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans while knowingly and wilfully being a member of a Communist front organization known as the National Lawyers Guild, which said organization has been cited by committees and sub-committees of the United States Congress as a Communist front organization on March 29, 1944, September 21, 1950 and on April 23, 1956,

Exhibit D

and while at the same time remaining continuously within the boundaries of the State of Louisiana five consecutive days immediately prior to and on the date of the 22nd day of January 1964, and that during such time he did knowingly and wilfully fail to register with the Department of Public Safety of the State of Louisiana as a member of a Communist front organization on or before the fifth day that he remained continuously in this State, all as required by Louisiana Revised Statutes Title 14, Section 360.

MOTION FILED MAR 27 1964

IN THE
Supreme Court of the United States

OCTOBER TERM, 1964

No. ~~51~~ 52

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et al.,

On Appeal from the United States District Court for the
Eastern District of Louisiana, New Orleans Division

**MOTION FOR LEAVE TO FILE BRIEF AND BRIEF AMICUS
CURIAE IN SUPPORT OF APPELLANTS BENJAMIN
E. SMITH AND BRUCE WALTZER**

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1963

No. 941

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et al.,

On Appeal from the United States District Court for the
Eastern District of Louisiana, New Orleans Division

**MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE
IN SUPPORT OF APPELLANTS BENJAMIN E. SMITH
AND BRUCE WALTZER**

The National Lawyers Guild moves for leave to file the attached Brief Amicus Curiae. The interest of the Guild in the case is set forth in the brief. Pursuant to Rule 42 of the Rules of this Court, the Guild requested the consent of the parties to the filing of the brief amicus. Consent has been received from the attorneys for the appellants but no consent has been received from the attorneys for the appellees.

ERNEST GOODMAN

DAVID REIN

Attorneys for

National Lawyers Guild

IN THE
Supreme Court of the United States

OCTOBER TERM, 1963

No. 941

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et al.,

On Appeal from the United States District Court for the
Eastern District of Louisiana, New Orleans Division

**BRIEF OF NATIONAL LAWYERS GUILD AMICUS CURIAE
IN SUPPORT OF APPELLANTS BENJAMIN E. SMITH
AND BRUCE WALTZER**

INTEREST OF THE NATIONAL LAWYERS GUILD

The National Lawyers Guild is a national bar association which throughout its history has supported the independence of the bar, the fair administration of justice and the preservation of civil liberties for all. It was the first national bar association that admitted all members of the bar without regard to race, creed or color. It also actively engages in the legal arena for elimination of discrimination and segregation in all forms.

Appellants are active practitioners in the State of Louisiana who have had a foremost role in the prose-

cution of civil rights cases in their State. They were arrested while attending the first interracial conference of lawyers in the city of New Orleans in recent history, a conference held under the auspices of the National Lawyers Guild as part of its program to break down discriminatory bars in the legal profession and elsewhere. Appellants were subsequently indicted on the ground that their membership in the Guild constituted a crime under the laws of the State of Louisiana. Since appellants are under attack because they have espoused the Guild principles of non-discrimination and freedom for all, and because of their Guild membership, it is more than appropriate for the Guild to submit its views as *amicus curiae* in their case.

ARGUMENT

The appellants have been indicted, and their reputations and professional careers prejudiced, because of their role in attempting to translate into living reality this Court's decisions as to the meaning of the 14th Amendment as a barrier to racial discrimination and segregation. In a period when the bar as a whole has failed to fulfill its responsibilities in this area, appellants, who are among the handful of white lawyers in the south who are discharging this duty find themselves, as a consequence, the targets of state vengeance. No more than as with the State of Virginia should this Court "close [its] eyes to the fact that the militant Negro civil rights movement has engendered the intense resentment and opposition of the politically dominant white community"¹ in the State of Louisiana. To say that under these circumstances, appellants cannot seek relief in the federal courts to enjoin these unconstitutional reprisals is to advocate federal ir-

¹ *N.A.A.C.P. v. Button*, 371 U.S. 415, 435.

responsibility. The abstention of the majority below in deference to state authority is especially misplaced in the present case. The federal-state conflict arises here not because of any interference by the federal courts with a proper state function, but solely because of the refusal of the state authorities to recognize the supremacy of the federal Constitution. The federal court system would be defaulting in this contest if it failed to come to the protection of those citizens who argue in opposition to the state authorities that the federal constitution is supreme and who are faced with reprisal by state authorities because of their advocacy of those views.

As the dissenting opinion so clearly shows, the whole rationale for independent federal courts and the Civil Rights Act which gave them jurisdiction is to prevent state action of the kind challenged here. In short it is imperative that the federal courts give relief in cases of this kind not only for the protection of appellants but for the preservation of the federal system itself.

All of the precedents in this Court indicate not only the presence of but the need for the federal courts to take jurisdiction. Despite the so-called general rule that federal courts will not enjoin a state criminal prosecution, this Court has never hesitated in enjoining a criminal prosecution involving a clear violation of federal constitutional rights, *Hague v. C.I.O.*, 307 U.S. 496; *Evers v. Dwyer*, 358 U.S. 202; *Gayle v. Browder*, 352 U.S. 903, aff'g 142 F. Supp. 707.

No serious argument can be presented that the Louisiana statute challenged by appellants is constitutional either on its face or as applied. Because of the breadth of the statute and its impact on the rights of speech, assembly and association, the statute is a gross

invasion of First Amendment rights, *Thornhill v. State of Alabama*, 310 U.S. 88; *Thomas v. Collins*, 323 U.S. 516; *Herndon v. Lowry*, 301 U.S. 242; *Cramp v. Board of Public Instruction*, 368 U.S. 278; *Wright v. Georgia*, 373 U.S. 284; *Shelton v. Tucker*, 364 U.S. 479. Because of its reliance on an ex parte listing of organizations by the House Committee on Un-American Activities, it constitutes a bill of attainder, *Cummings v. Missouri*, 4 Wall. 277; *Garner v. Board of Public Works*, 341 U.S. 716, 722; *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 127, 143 (concurring opinion); *Barsky v. Board of Regents*, 347 U.S. 442, 459 (dissenting opinion); and a denial of procedural due process, *Joint Anti-Fascist Refugee Committee v. McGrath*, *supra*; *United States v. Lovett*, 328 U.S. 313, 317; *Nostrand v. Balmer*, 53 Wash. (2d) 460, 471-2, 335 P. 2d 10, 16-17. The registration requirement violates the privilege against self-incrimination, *Blau v. United States*, 340 U.S. 159; *People v. McCormick*, 228 P. 2d 349; and the entire statute involves a field which has been preempted by the federal government, *Pennsylvania v. Nelson*, 350 U.S. 497; *Hines v. Davidowitz*, 312 U.S. 52.

Moreover, the complaint alleged and the appellants offered to prove that the statute was being applied to them in an unconstitutional fashion and solely because of their opposition to the official segregation policy of the State of Louisiana. There is no question that the appellants were entitled to introduce such evidence, and, if the facts supported their allegations, were entitled to relief. *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210; *N.A.A.C.P. v. Alabama*, 357 U.S. 449; *Bates v. Little Rock*, 361 U.S. 516; *Louisiana v. N.A.A.C.P.*, 366 U.S. 293; *N.A.A.C.P. v. Button*, 371 U.S. 415.

The majority's grounds for denying appellants the opportunity to offer such evidence has no precedent in this or any other court and are plainly irrational. So far as we have been able to determine, the argument that appellants must be denied their day in court because at such hearing appellees would also be entitled to introduce evidence, is original with the majority below, and we trust it will find no endorers in other jurisdictions. The further objection that a public hearing in a United States Federal District Court would be a "Star Chamber proceeding with all the 'folderol' and publicity attendant therewith" is as frivolous as it is unintelligible.²

Equally without merit is the majority's conclusion that appellants may be unconstitutionally persecuted because "here the very vitals of our constitutional system of government are on the line." What is "on the line" is the effort of the State of Louisiana to preserve its unconstitutional system of white supremacy in defiance of this Court's opinions. As Judge Wisdom's dissenting opinion put it, "the Louisiana legislature regards the movement to increase Negro voting in the State as part of the Communist conspiracy." And the growing effort to equate Negro

² The court may have been legitimately concerned with the extravagant character of some of the defendants in this action. Thus according to paragraph 15 of appellants' offer of proof the defendants who conducted the unlawful raid on appellants' homes and offices were quoted as not informing the FBI of this raid because "We knew that if we told the FBI about this raid, they would have to tell Bobby Kennedy. We cannot trust him and we expect him to tell his friend, Martin Luther King." However, legitimate may have been the concern to protect the public reputation of Louisiana state officials, it is not sufficient ground to deny appellants' relief. On the contrary, it only serves to demonstrate that appellants can only obtain relief in a federal tribunal.

protest with Communism is only one aspect of the southern states' technique of nullifying federal court decisions in the area of civil rights, see Lusky, *Racial Discrimination and the Federal Law: A Problem in Nullification*, 63 Columbia L. Rev. 1163, 1173-4.

Because of its flagrantly unconstitutional nature, we have no doubt as to the eventual fate of this effort of the State of Louisiana to harass and persecute appellants. But the prospect that appellants can, after prosecution and conviction in the Louisiana courts, eventually come to this Court for relief to strike down this unconstitutional action, is hardly an adequate remedy. Since appellants are practicing attorneys in the State of Louisiana, the harm that would be done to them, their reputations and their practice of law in the intervening years would be irreparable. Appellants are being victimized because they are, in the hostile climate of the State of Louisiana, staunch supporters of the principles enunciated by this Court. They deserve more than the promise of future vindication in this Court in the years to come.

The judgment below should be reversed with directions to grant the relief prayed for in the complaint.

Respectfully submitted,

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SUPREME COURT, U. S.

Supreme Court of the United States

OCTOBER TERM, 1963

No. ~~111~~ 52

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE
EDUCATIONAL FUND, INC.,

Plaintiffs-Appellants,

BENJAMIN E. SMITH and BRUCE WALTZER,

Intervenors-Appellants,

against

JAMES H. PFISTER, individually and as Chairman of the Joint
Legislative Committee on Un-American Activities of the Lou-
isiana Legislature, RUSSELL R. WILLIE, individually and as
Major of the Louisiana State Police Department, JIMMIE H.
DAVIS, individually and as Governor of the State of Louisiana,
JACK P. F. GREMILLION, individually and as Attorney General
of the State of Louisiana, COLONEL THOMAS D. BURBANK, in-
dividually and as Commanding Officer of the Division of Loui-
siana State Police, and JIM GARRISON, individually and as
District Attorney for the Parish of Orleans, State of Louisiana,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION AND LOUISIANA CIVIL LIBERTIES UNION, *AMICI CURIAE*

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April 1964

Supreme Court of the United States

OCTOBER TERM, 1963

No. 941

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE
EDUCATIONAL FUND, INC.,

Plaintiffs-Appellants,

BENJAMIN E. SMITH and BRUCE WALTZER,

Intervenors-Appellants,

against

JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, RUSSELL R. WILLIE, individually and as Major of the Louisiana State Police Department, JIMMIE H. DAVIS, individually and as Governor of the State of Louisiana, JACK P. F. GREMILLION, individually and as Attorney General of the State of Louisiana, COLONEL THOMAS D. BURBANK, individually and as Commanding Officer of the Division of Louisiana State Police, and JIM GARRISON, individually and as District Attorney for the Parish of Orleans, State of Louisiana,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

The American Civil Liberties Union and its affiliate, the Louisiana Civil Liberties Union, respectfully move for leave to file brief as *amici curiae* in support of appellants' Statement of Jurisdiction. The attorneys for appellants have consented, as has Hon. Jim Garrison, District Attorney for the Parish of Orleans. Hon. Jack P. F. Gremillion, Attor-

ney General of Louisiana has refused consent. Jack Rogers, Esq., attorney for appellee Pfister, did not reply. The consents and refusal have been filed with the Clerk of the Court.

Though the American Civil Liberties Union frequently appears *amicus curiae* in this Court, it does so very infrequently prior to the consideration of the jurisdictional statement or petition for certiorari. We believe, however, that our motion for leave to appear at this stage of the case at bar is warranted by its special importance. Our reasons are set forth in the text of the brief which follows.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1963

No. 941

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EDUCATIONAL FUND, INC.,

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Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

BRIEF AMICI CURIAE OF AMERICAN CIVIL LIBERTIES UNION AND LOUISIANA CIVIL LIBERTIES UNION

The American Civil Liberties Union and the Louisiana Civil Liberties Union file this brief in support of the appellant's jurisdictional statement because this case raises basic questions about the enforcement of the Bill of Rights in our federal system which urgently need authoritative clarification by this Court.

The cases arise out of the turbulence of the movement to secure political liberty for American Negroes. Concurrently, it draws into issue the validity of state statutes which purport to regulate subversive activities and communism. Decisions validating politically repressive legislation against one nationally unpopular minority¹ offer to local governments a continuing incentive to achieve, by indirection, denial of the federal rights of a regionally unpopular minority.² By capitalizing on the legitimated aversion to communism, the appellees hope to create another obstacle in the way of Negro freedom.³ So long as it is lawful to repress communism but unlawful to repress Negro equalitarianism, this Court has the obligation to lay down clear rules preventing the destruction of Negro rights on the pretext that those who claim them or defend them are subversive.

In addition, two of the appellants in this case, Messrs. Smith and Waltzer, are lawyers who have been indicted under these statutes (Louisiana Revised Statutes, Title 14, Sec. 360) solely because they have not shirked their duty as members of the bar to represent clients who are unpopular in their community.⁴ Not coincidentally, Mr. Smith is Chairman and Mr. Waltzer a member of the Legal Panel of the Louisiana Civil Liberties Union.

¹ See, e.g., *Communist Party v. Subversive Activities Control Board*, 367 U. S. 1.

² See Lusky, *Racial Discrimination and the Federal Law: A Problem in Nullification*, 63 Col. L. Rev. 1163, 1173-74.

³ The type of statute involved here is not peculiar to Louisiana. See, e.g., *Stanford v. Texas*, No. 869, petition for certiorari filed February 26, 1964.

⁴ Mr. Smith has been indicted for being a member and Treasurer of the Southern Conference Educational Fund, and a member of the National Lawyers Guild. Mr. Waltzer has been indicted for being a member of the National Lawyers Guild.

That the bar at large is not satisfactorily discharging its duty to represent the unpopular client has frequently been recorded.⁵ To allow two lawyers to be subjected to criminal prosecution because they have represented individuals engaged in unpopular causes is to penalize them for doing their professional duty and inferentially to applaud the lassitude of their colleagues at the bar. Such attacks on lawyers, if successful, can render Negro rights illusory in large sections of the country. A legal right has little meaning if no lawyer can be found to defend it.

For these reasons, most briefly stated, we urge the Court to note probable jurisdiction. The full breadth of the issues can be explored only on plenary consideration of the case.

Respectfully submitted,

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April 1964

⁵ See, for example, Rostow, *The Lawyer and His Client*, ABA Journal, January 1962, February 1962; Downs and Goldman, *The Obligation of Lawyers to Represent Unpopular Defendants*, 9 Howard Law Journal 49 (1963); Symposium, *The Right to Counsel and the "Unpopular Cause,"* 20 Univ. of Pitt. Law Rev. 725 (1959); Cheatham, *A Lawyer When Needed* (Columbia Univ. 1963); Sacks, *Defending the Unpopular Client*, National Council on Legal Clinics (Amer. Bar Center, 1961).



IN THE
Supreme Court of the United States

OCTOBER TERM, 1944

No. ~~52~~ 52

JAMES A. DOMBROWSKI, ET AL.

JAMES H. PFISTER, ET AL.

*On Appeal from the United States District Court for the
Eastern District of Louisiana, New Orleans Division.*

**OBJECTION AND OPPOSITION TO MOTION FOR
LEAVE TO FILE BRIEF AMICUS CURIAE IN
SUPPORT OF APPELLANTS BENJA-
MIN E. SMITH AND BRUCE
WALTZER.**

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1963

No. 941

JAMES A. DOMBROWSKI, ET AL.

versus

JAMES H. PFISTER, ET AL.

*On Appeal from the United States District Court for the
Eastern District of Louisiana, New Orleans Division.*

**OBJECTION AND OPPOSITION TO MOTION FOR
LEAVE TO FILE BRIEF AMICUS CURIAE IN
SUPPORT OF APPELLANTS BENJA-
MIN E. SMITH AND BRUCE
WALTZER.**

Jack P. F. Gremillion, Attorney General for the State of Louisiana does hereby file objection and opposition to motion for leave to file brief amicus curiae in support of appellants Benjamin E. Smith and Bruce Waltzer by the National Lawyers Guild all in accordance and in pursuant to Rule 42 and rules of this Court. Consent has been with-

2
held to the filing of said motion because all legal defenses
can be adequately pursued by the present litigants.

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M. E. CULLIGAN,
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CERTIFICATE

This is to certify that copies of the foregoing objection and opposition have been served on all parties through their counsel of record properly addressed and postage prepaid.

April _____, 1964.

**JAMES A. DODD-WHEAT and Southern Commercial
Educational Fund, Inc.**

Plaintiffs-Appellants.

BENJAMIN E. SMITH and BRUCE WATERS,

Defendants-Appellees.

against

**JAMES H. SPYER, individually and as Chairman of the Joint
Legislative Committee on Un-American Activities of the
Louisiana Legislature, BENJAMIN D. WEAVER, individually
and as Mayor of the Louisiana State Police Department,
JEROME H. DAVIS, individually and as Governor of the
State of Louisiana, JACK P. B. CHASTAIN, individually
and as Attorney General of the State of Louisiana, GEORGE
WILFRED THOMAS D. BOURGAIN, individually and as Command-
ing Officer of the Division of Louisiana State Police, and
JIM GARRISON, individually and as District Attorney for
the Parish of Orleans, State of Louisiana.**

Defendants-Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION**

**MOTION TO DISMISS OR AFFIRM AND
BRIEF FOR THE APPELLEE IN OPPOSITION**

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 941

JAMES A. DOMBROWSKI, et al,

v.

JAMES H. PFISTER, et al:

*On Appeal from the United States District Court for the
Eastern District of Louisiana, New Orleans Division*

MOTION TO DISMISS OR AFFIRM

QUESTION PRESENTED FOR REVIEW

Does a federal District Court have the authority to refrain from issuing an injunction, sought on the ground of the unconstitutionality of a state statute, against a state criminal prosecution under that statute, pending a decision of the courts of the state on the issues, where there has been no allegation that full and fair consideration will not be given in the state courts, or of extreme hardship other than the burden of a criminal defense?

STATEMENT OF THE CASE

Appellants James A. Dombrowski, Executive Director of the Southern Conference Educational Fund, Inc., and the corporation itself, filed suit in the United States District Court for the Eastern District of Louisiana, New Orleans

Division, for an injunction against the enforcement against them of the Louisiana Subversive Activities and Communist Control Law, claiming that this statute was violative of the rights, privileges and immunities guaranteed to them under the Constitution and laws of the United States. A three-judge court was convened pursuant to Title 28, Section 2281 of the United States Code. The court, after hearing argument, ordered the suit dismissed, without hearing evidence as to the asserted unconstitutional application of the statute to the appellants. The court held that it should not enjoin the enforcement of the state statute pending a determination by the courts of the state on the legal issues. Criminal prosecutions against appellants Dombrowski, Smith and Waltzer for violation of the statute have been initiated, and are scheduled for trial during June or July 1964.

ARGUMENT

Appellants pose eight questions as presented by this appeal, relating to the constitutionality of the state statute as applied to appellants, and the power of the court below to enjoin the prosecution of certain of the appellants under the statute. However, the decision of the court below rested not on a finding that the statute was constitutional as applied to appellants, but on its determination that it should not rule on the constitutional issues until the courts of the state had had an opportunity to do so. Therefore, the real issue in this appeal is whether the court below had the authority to defer to the state courts.

The Court has been presented a jurisdictional statement posing a number of constitutional issues relating to a state statute which have not been passed upon, either by any court in the State of Louisiana, or by the court below. As said by the dissenting judge below:

"The Court declined to act on the constitutional issues the case presents, and refused to plaintiffs an opportunity to offer evidence in proof of their cases." (Jurisdictional Statement, page 15a) "The majority opinion does not discuss any of the substantial constitutional issues the complaint raises." (Jurisdictional Statement, page 21a)

In connection with a preliminary consideration of the continuation of a temporary restraining order issued by one member of the court below, the court did tentatively determine that the statute was not unconstitutional on its face, and the majority opinion discusses whether the federal Smith Act and Internal Security Act supersede any state action in the field of subversion, as the basis for a preliminary finding that the state had authority to act in that area. (See *Stefanelli v. Minard*, 342 U.S. 117, 120.) However, the court based its decision primarily on the desirability of equitable abstention on the part of the federal courts under the circumstances, and in light of its position in this respect considered it unnecessary to hear evidence intended to establish that the statute as applied was unconstitutional, or that the state's manner of applying of the Statute was unconstitutional.

The effect of this was to produce a record barren of any evidence. The strongly worded opinion of the dissenting judge was based solely on the allegations of the appellants, without evidence in support of those allegations having been presented. Rather than awaiting the outcome of the prosecutions, wherein all the constitutional and legal issues posed by appellants in their jurisdictional statement could be considered based on a full record in the trial court, appellants chose to appeal to this Court at this stage. It is true that appellants will be required to suffer the expense, embarrassment and strain of criminal prosecutions which would perhaps be avoided if this Court were to undertake to determine at this point whe-

ther the statute is unconstitutional. However, this is not the type of irreparable injury which would permit the federal courts to exercise their equitable jurisdiction to restrain state criminal proceedings. *Stefanelli v. Minard*, supra. As the Court said in that opinion (page 121):

"Only last term we restated our conviction that the Civil Rights Act 'was not to be used to centralize power so as to repeal the federal system'. *Collins v. Hardyman*, 341 U.S. 651, 658, 71 S. Ct. 937, 940, 95 L. Ed. 1253. Discretionary refusal to exercise equitable power under the Act to interfere with State criminal prosecutions is one of the devices we have sanctioned for preserving the balance."

The Court followed its earlier decision in *Douglas v. City of Jeannette*, 319 U.S. 157, where it had said (page 163):

"Congress, by its legislation, has adopted the policy, with certain well defined statutory exceptions, of leaving generally to the state courts the trial of criminal cases arising under state laws, subject to review by this court of any federal questions involved. Hence, courts of equity in the exercise of their discretionary powers should conform to this policy by refusing to interfere with or embarrass threatened proceedings in state courts save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is clear and imminent . . . It is a familiar rule that courts of equity do not ordinarily restrain criminal prosecutions. No person is immune from prosecution in good faith for his alleged criminal acts. Its imminence, even though alleged to be in violation of constitutional guaranties, is not a ground for equity relief since the lawfulness or constitutionality of the statute or ordinance in which the prosecution is based may be determined as readily in the criminal case as in a suit for injunction."

Congress has enacted the following provision in the Judicial code (28 U.S.C. §2283):

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

An examination of Sections 2281 and 1343 of Title 28, and Sections 1983 and 1985 of Title 42 of the United States Code, on which appellants rely, fails to indicate that Congress has expressly authorized the granting of injunctions to stay state court proceedings. The general language of the Civil Rights Act, allowing equitable actions in federal court to enforce constitutional rights, does not supply the specificity required by Section 2283. Thus this is not simply a matter of judicial administration, but one of statutory limitation on the power of federal courts in this type of situation.

In any event, there is nothing in the record in the court below to indicate irreparable injury as the basis for the exercise of equitable jurisdiction, even if the statutory prohibition did not exist. Neither is there any assertion that the courts of the State of Louisiana will not give full and fair consideration to the legal and constitutional issues posed by appellants. The record of the Supreme Court of Louisiana in this very area suggests to the contrary. *State v. Jenkins*, 236 La. 300, 107 So. 2d 648.

It is respectfully submitted that this case in its present posture presents no important federal issue not decided by the Court in the cases mentioned above, and reviewed as recently as the 1962 Term in *Cleary v. Bolger*, 371 U.S. 392, where it held that federal equitable jurisdiction could not be invoked for the purpose of enjoining unconstitutional actions of federal government officers in connection with a state prosecution.

If the Court should feel that the record below is sufficient to permit the consideration of the constitutional issues posed by appellants, and that the court below was without authority to defer to the state courts, there is still a practical matter to be considered. As the Court said in its footnote to the opinion in the *Stefanelli* case, on page 123, Congress has demonstrated that orderly consideration of judicial proceedings should not be broken up by piecemeal determination of issues. The record in this Court is devoid of any evidence relating to the unconstitutional application of the statute to appellants, this point having been made as the fourth question presented by the appeal in appellants' jurisdictional statement. In order to consider this issue properly, the Court would be required to return the case to the court below for the taking of evidence. Meanwhile, the prosecutions are proceeding, and will be reached for trial in June or July of this year. Under Article 7, Section 10 of the Constitution of the State of Louisiana of 1921, direct appeal is provided to the Supreme Court of the State in criminal cases on questions of law when a fine of over \$300.00 or imprisonment of over six months is imposed. Section 365 of the statute under consideration, found at page 49a of appellants' jurisdictional statement, indicates the punishment provided for violations of the statute, ten thousand dollars maximum fine and imprisonment at hard labor for not more than ten years, so that in the event of conviction it is probable that direct appeal to the Supreme Court of the State can be taken. Under Title 15, Section 542 of the Revised Statutes of the State of Louisiana, appeal to the Supreme Court of the State of Louisiana must be made in ten days. Thus the appeal will probably be heard in the State Supreme Court in the fall, and in all likelihood before this Court can hear argument on this appeal. There will then be a full record on the issues posed in the jurisdictional statement herein, and especially as to the unconstitutional application of the statute to appellants, and an appeal to this Court

from the decision of the Supreme Court of the State may well raise additional issues. The consideration of the case in the posture of the present appeal will simply lead to piecemeal consideration of the constitutional issues posed by appellants. Of course, if appellants are acquitted in the criminal prosecution this spring, the present appeal will be rendered moot.

Under these circumstances, would it not be preferable to permit the criminal prosecution to proceed, and let any appeal to this Court be based on a record which encompasses all the issues that can be raised by appellants; and where, if the Court grants the appeal, it may not be mooted by acquittal in the state courts?

Should the Court decide to consider the appeal on the single issue properly before it, namely, the authority of the court below, to refuse injunctive relief to appellants against state court action, it is suggested that by the time the Court can hear and decide that issue, some time during the fall or winter of 1964, the criminal trial, and very possibly the appellate procedure in the State Supreme Court, will have been completed, so that the expense, strain and embarrassment involved in the prosecution will have been borne, and any injunction granted at that stage will be unavailing to appellants.

A final consideration lies in the expression of policy set forth in the *Stefanelli* opinion (page 120) as to the exercise of federal discretionary equitable jurisdiction over state action, that "the considerations governing that discretion touch perhaps the most sensitive source of friction between States and Nation, namely, the active intrusion of the federal courts in the administration of the criminal law," an area where the Court should at the very least be certain that its

accepting jurisdiction will serve an effective purpose, and will provide the Court an opportunity to give careful consideration to every aspect of the subject. It is respectfully submitted that the posture of this case and the extent of the record before the Court in that posture, will permit neither.

Accordingly, the appeal should be dismissed, and the judgment below affirmed.

Respectfully submitted,

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Of Counsel

I certify that a copy of the foregoing motion and brief has been served upon plaintiffs-appellants by mailing same to their counsel of record.

JACK N. ROGERS

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On Un-American Activities
State of Louisiana

Office Supreme Court, U.S.
FILED

MAY 28 1964

JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1963

No. ~~52~~ 52

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE
EDUCATIONAL FUND, INC.,

Plaintiffs-Appellants,

BENJAMIN E. SMITH and BRUCE WALTZER,

Intervenors-Appellants,

against

JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, RUSSELL R. WILLIE, individually and as Major of the Louisiana State Police Department, JIMMIE H. DAVIS, individually and as Governor of the State of Louisiana, JACK B. F. GREMILLION, individually and as Attorney General of the State of Louisiana, COLONEL THOMAS D. BURBANK, individually and as Commanding Officer of the Division of Louisiana State Police, and JIM GARRISON, individually and as District Attorney for the Parish of Orleans, State of Louisiana,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS
DIVISION

APPELLANTS' RESPONSE TO MOTION TO DISMISS OR AFFIRM

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Supreme Court of the United States

October Term, 1963

No. 941

JAMES A. DOMBROWSKI, *et al.*,
Plaintiffs-Appellants,

BENJAMIN E. SMITH AND BRUCE WALTZER,
Intervenors-Appellants,
against

JAMES H. PFISTER, *et al.*,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

APPELLANTS' RESPONSE TO MOTION TO DISMISS OR AFFIRM

On Friday, May 15th, appellants received a copy of a document entitled "Motion to Dismiss or Affirm and Brief for the Appellee in Opposition". Neither the motion nor the brief indicates on its face on whose behalf it is filed. It is signed by "Jack N. Rogers, Committee Counsel, Joint Legislative Committee on Un-American Activities, State of Louisiana". Previously in this Court, Mr. Rogers filed a motion for enlargement of time on behalf of appellee Pfister. No motion to dismiss or affirm has been filed by the Attorney-General of the State of Louisiana or the

District-Attorney of the Parish of Orleans on behalf of themselves or the other named appellees.*

It is not at all clear for whom Mr. Rogers speaks. The Joint Legislative Committee on Un-American Activities is not a party to this action, nor is it an appellee in this Court. Appellee Pfister, as of May 12th of this year, is no longer a member of the Louisiana Legislature nor the Chairman of the Joint Legislative Committee. As we have previously indicated to this Court in our opposition to motion for enlargement of time, appellee Pfister's interest in this proceeding, which challenges the constitutionality of certain Louisiana statutes, is thus minimal:

Appellants suggest to the Court that this minimal character of Mr. Pfister's interest in the present appeal is relevant in considering the main thrust of his contentions. The essence of his argument is that regardless of any question of federal jurisdiction or federal constitutional law any relief in this Court or any federal court will be futile since the state prosecutions under the challenged statutes "are proceeding, and will be reached for trial in June or July of this year." Rogers' Motion and Brief, p. 6.

It is of some interest that this argument has been made in this Court by a party without any responsibility for the

* On April 19th, Mr. Gremillion moved this Court on behalf of himself, individually and as Attorney-General, Jimmie H. Davis, individually and as Governor, and Colonel Burbank, individually and as Commanding Officer of the Louisiana State Police, for an extension of time to file a motion to dismiss or affirm until May 25th. Appellants opposed this extension of time. An order was entered extending their time to file until May 10th. On May 7th Mr. Gremillion filed an additional motion to further enlarge appellees' time to file a motion to dismiss or affirm. This motion was denied. No motion to dismiss or affirm was then filed on behalf of either Mr. Gremillion, Mr. Davis or Colonel Burbank. No request for any extension of time or any motion to dismiss or affirm was ever filed by Mr. Garrison as District Attorney of Orleans Parish to appellees' knowledge.

prosecutive enforcement of the challenged laws. In addition to other implications raised by this contention, it simply does not reflect the actual situation in Orleans Parish. There is not the slightest likelihood that these cases will be tried by the state courts in "June or July of this year" or disposed of in the near future, under present timetables. See affidavit of counsel reproduced here as Appendix A.

But the argument is more serious than merely the misstatement of the litigation situation in Orleans Parish. It would disregard totally the impact of the Supremacy Clause. Neither this Court nor the lower federal courts are as helpless as Mr. Rogers assumes. If, as Circuit Judge Wisdom forcefully points out in his dissenting opinion, "this case is a classic example for raising the shield of the Constitution in protection of a citizen's constitutional rights" [Jurisdictional Statement, 19a], then this Court and the lower federal courts surely have ample power to raise that shield.

This power was properly asserted by Judge Wisdom in originally issuing a temporary restraining order in this case. Should it ever appear that the state authorities intend to press the prosecutions to trial *prior* to the opportunity for this Court, or the District Court on remand, to reach the basic issues here involved, both this Court and the lower courts have full and ample power to issue on proper application whatever temporary relief is required to preserve Federal jurisdiction.

The primary responsibility of the Federal courts for the protection of "all wrongful governmental invasion of fundamental rights and freedoms", a responsibility "close to the heart of the American Federal Union" [opinion of Judge Wisdom, Jurisdictional Statement 17a, 18a], cannot be frustrated because of an erroneous refusal to accept that responsibility by a lower federal court. In reviewing and reversing the failure of the majority below to meet

the responsibilities the Constitution and the laws of the United States place upon the federal courts, surely this Court has ample power to protect its own jurisdiction, to review these fundamental and basic issues of federal jurisdiction and constitutional law.

The suggestion of Rogers that in some manner the state court proceedings may render futile federal relief misses the total thrust of the question. The state proceedings themselves at any stage, and the laws they are grounded on, are designed to intimidate and deter these appellants and the thousands upon thousands of Negro citizens of Louisiana, who seek equality under the law in that state, from exercising fundamental federal constitutional rights. The immediate and ever constant threat to federally protected rights will continue until the power vested in the federal courts by the Constitution and the laws to protect these basic rights is properly exercised.*

Circuit Judge Wisdom placed the issue sharply in his strong dissent:

"The distinguishing feature of this case, which the majority chooses to ignore, is the contention that the State, under the guise of combating subversion, is in fact using and abusing its laws to punish the plaintiffs for their advocacy of civil rights for Negroes. It so happens that the plaintiffs contend that the Louisiana Anti-Subversion Law is unconstitutional and, besides, has been superseded by congressional legislation. If those contentions are sound, unquestionably the plaintiffs have a right to relief in the federal court. But the deep thrust of the complaint is the State's abuse of its power as

* The deterrent impact of these laws and prosecutions is heightened by the provision of Louisiana law, Louisiana Rev. Stat. 15:550, which denies the right of bail pending appeal where sentences imposed are five years' imprisonment or more. The challenged laws provide for penalties of ten years' imprisonment (49a, 51a).

to the plaintiffs. If the evidence on this point should support the plaintiffs, they would be entitled to relief—even if the law were clearly constitutional.

“If the Louisiana Anti-Subversion Law is invalid on its face or invalid as applied the plaintiffs, they should not be subjected to the public indignity of prosecution, the paralysis of earning ability while their case is pending, and a long, expensive appeal through the state courts to the United States Supreme Court. These are foreseeable and inevitable consequences of unlawful State action of the kind alleged here. Win, lose, or draw in the court of last resort—the individual citizen is a heavy loser when the State abuses its legislative power and criminal processes. The only adequate remedy is for the federal district court to stop the State at the start of its abuse of its governmental power. Whether the State is misusing its power can be determined only after a fair and full hearing. The logical forum for that determination is a federal tribunal.

“This Court has jurisdiction. And as a three-judge Court it was instituted for just such a case. It should face up to the responsibilities incident to jurisdiction and to doing the job it was designed to do * * *.” (18a, 19a)

We would urge this Court to determine finally the issues here posed and hold the state statutes unconstitutional upon their face and superseded by federal legislation. No further record below is required for such a determination. Should however, the Court reverse the dismissal of the complaint for further consideration by the District Court, appropriate instructions might be included directing the District Court to issue whatever temporary injunctive relief might be re-

quired to preserve the status quo and the jurisdiction of the Court.

The motion to dismiss or affirm should be denied.

Respectfully submitted,

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APPENDIX A

AFFIDAVIT

STATE OF LOUISIANA }
PARISH OF ORLEANS } ss.:

BEFORE ME, the undersigned authority, duly qualified and commissioned in and for the Parish and State above written, PERSONALLY CAME AND APPEARED: MILTON E. BRENER who, after being first duly sworn, declared that:

I am attorney of record for James A. Dombrowski in the Criminal proceedings against him in the Parish of Orleans involving alleged violation of the Louisiana "Communist Control" and "Subversive Activities" laws.

I have been engaged in the practice of criminal law in the Criminal District Court for the Parish of Orleans since 1956. In addition, I served as Assistant District Attorney for the Parish of Orleans from 1956 to 1958 and again from early 1962 until mid-1963. I am familiar with criminal trial and appellate procedure in this Parish. Trial of the above cases on the merits before early 1965 is highly unlikely, and trial before late 1964 is virtually impossible.

The normal and usual delay between trial before the District Court and the hearing of appeal before the Louisiana State Supreme Court in criminal cases is approximately one year. A two year delay is not unusual and delays of from 3 to 5 years have occurred in lengthy or complex cases.

MILTON E. BRENER.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1964

No. 52

JAMES A. DOMBROWSKI, ET AL.,

v.

JAMES H. PFISTER, ET AL.

On Appeal from the United States District Court
for the Eastern District of Louisiana,
New Orleans Division

**MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE
IN SUPPORT OF APPELLANTS BENJAMIN E. SMITH
AND BRUCE WALTZER**

AND

**BRIEF OF NATIONAL LAWYERS GUILD AMICUS CURIAE
IN SUPPORT OF APPELLANTS BENJAMIN E. SMITH
AND BRUCE WALTZER**

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AND BRUCE WALTZER**

The National Lawyers Guild moves for leave to file the attached Brief Amicus Curiae. The interest of the Guild in the case is set forth in the brief. Pursuant to Rule 42 of the Rules of this Court, the Guild requested the consent of the parties to the filing of

the brief amicus. Consent has been received from the attorneys for the appellants but no consent has been received from the attorneys for the appellees.

ERNEST GOODMAN &

DAVID REIN.

Attorneys for

National Lawyers Guild

IN THE
Supreme Court of the United States

OCTOBER TERM, 1964

No. 52

JAMES A. DOMBROWSKI, ET AL.,

v.

JAMES H. PFISTER, ET AL.

On Appeal from the United States District Court
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**BRIEF OF NATIONAL LAWYERS GUILD AMICUS CURIAE
IN SUPPORT OF APPELLANTS BENJAMIN E. SMITH
AND BRUCE WALTZER**

INTEREST OF THE NATIONAL LAWYERS GUILD

The National Lawyers Guild is a national bar association which throughout its history has supported the independence of the bar, the fair administration of justice and the preservation of civil liberties for all. It was the first national bar association that admitted all members of the bar without regard to race, creed or color. It also actively engages in the

legal arena for the elimination of discrimination and segregation in all forms. During the past summer, the Guild, through its Committee for Legal Assistance in the South, established an office in Jackson, Mississippi, for the purpose of providing much needed legal assistance to civil rights workers in that State. Appellants were and are a vital force in that activity, appellant Smith acting as the co-chairman of the Guild committee in charge of the project. Appellant Smith is also a National Vice-President of the Guild.

Appellants are active practitioners in the State of Louisiana who have had a foremost role in the prosecution of civil rights cases in their State. (R. 3, 51-52). They were arrested while attending the first interracial conference of lawyers in the city of New Orleans in recent history, a conference held under the auspices of the National Lawyers Guild as part of its program to break down discriminatory bars in the legal profession and elsewhere. Appellants were subsequently indicted on the ground that their membership in the Guild constituted a crime under the laws of the State of Louisiana. Since appellants are under attack because they have espoused the Guild principles of non-discrimination and freedom for all without regard to race or color, and because of their Guild membership and activity, it is more than appropriate for the Guild to submit its views as *amicus curiae* in their case.

ARGUMENT

The appellants have been arrested and indicted, and their reputations and professional careers prejudiced, because of their role in attempting to translate into living reality this Court's decisions as to the meaning of the 14th Amendment as a barrier to racial dis-

crimination and segregation. The failure of the bar as a whole to adequately fulfill its responsibilities in this area has received general recognition. See Rostow, *The Lawyer and his Client*, 48 A.B.A. Journal 146, 149, quoting from 1961 Report of the American Bar Association's Standing Committee on the Bill of Rights; Report of the United States Commission on Civil Rights for 1963, p. 118; Report of Lawyers Committee for Civil Rights under Law as reported in New York Times of February 18, 1964, at p. 20.

Nonetheless, appellants, who are among the handful of white lawyers in the south who are discharging their responsibility as members of the bar find themselves, as a consequence, the targets of state vengeance.¹ No more than as with the State of Virginia should this Court "close [its] eyes to the fact that the militant civil rights movement has engendered the intense resentment and opposition of the politically dominant white community"² in the State of Louisiana. To say that, under these circumstances, appellants cannot seek relief in the federal courts to enjoin these unconstitutional reprisals is to advocate federal irresponsibility.

The abstention of the majority below in deference to state authority is especially misplaced in the present case. The federal-state conflict arises here not

¹ The probability of reprisals against white southern lawyers who handle civil rights cases was commented on by Deputy Attorney General (now Acting Attorney General) Katzenbach at the 1963 convention of the American Bar Association, see New York Times, August 14, 1963 at p. 18. For similar comments see Report of the Lawyers Committee for Civil Rights under Law, New York Times, Feb. 18, 1964 at p. 20.

² *N.A.A.C.P. v. Button*, 371 U.S. 415, 435.

because of any interference by the federal courts with a proper state function, but solely because of the refusal of the state authorities to recognize the supremacy of the federal Constitution. The federal court system would be defaulting in this contest if it failed to come to the protection of those citizens who, in their own state, urge the supremacy of the federal Constitution and are, because of these views, faced with reprisal by state authorities.

As the dissenting opinion so clearly shows (R. 102-108) the whole rationale for independent federal courts and the Civil Rights Act which confers jurisdiction in cases of this character is to prevent state action of the kind challenged here. In short it is imperative that the federal courts give relief in cases of this kind not only for the protection of appellants but for the preservation of the federal system itself.

All of the precedents in this Court indicate not only the presence of but the means for the federal courts to take jurisdiction. Despite the so-called general rule that federal courts will not enjoin a state criminal prosecution, this Court has never hesitated in enjoining a criminal prosecution involving a clear violation of federal constitutional rights, *Hague v. C.I.O.*, 307 U.S. 496; *Evers v. Dwyer*, 358 U.S. 202; *Gayle v. Browder*, 352 U.S. 903, aff'g 142 F. Supp. 707. And only last term, this Court reemphasized that the abstention doctrine is particularly inapplicable where a challenge is made, as here, to a vague state statute which "inhibit[s] the exercise of First Amendment freedoms," *Baggett v. Bullitt*, 377 U.S. 360, 379.

No serious argument can be presented that the Louisiana statute challenged by appellants is constitutional either on its face or as applied. Because of

the breadth and vagueness of the statute and its impact on the rights of speech, assembly and association, the statute is a gross invasion of First Amendment rights, and its very existence constitutes a restraint on the exercise of those rights, *Thornhill v. State of Alabama*, 310 U.S. 88; *Thomas v. Collins*, 323 U.S. 516; *Herndon v. Lowry*, 301 U.S. 242; *Cramp v. Board of Public Instruction*, 368 U.S. 278; *Wright v. Georgia*, 373 U.S. 284; *Shelton v. Tucker*, 364 U.S. 479; *Baggett v. Bullitt*, 377 U.S. 360. Because of its reliance on an ex parte listing of organizations by the House Committee on Un-American Activities, it constitutes a bill of attainder, *Cummings v. Missouri*, 4 Wall. 277; *Garner v. Board of Public Works*, 341 U.S. 716, 722; *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 127, 143 (concurring opinion); *Barsky v. Board of Regents*, 347 U.S. 442, 459 (dissenting opinion); and a denial of procedural due process, *Joint Anti-Fascist Refugee Committee v. McGrath*, *supra*; *United States v. Lovett*, 328 U.S. 313, 317; *Nostrand v. Balmer*, 53 Wash. (2d) 460, 471-2, 335 P. 2d 10, 16-17.³ The registration requirement violates the privilege against self-incrimination, *Emspak v. United States*, 349 U.S. 190; *People v. McCormick*, 228 P. 2d 349; and the entire statute invades a field which has been preempted by the federal government, *Pennsylvania v. Nelson*, 350 U.S. 497; *Hines v. Davidowitz*, 312 U.S. 52.

³ For a description of the process employed by the House Committee in citing organizations as "subversive" see Donner, *The Un-Americans* (Ballantine Books, N.Y. 1961) ch. 12. For a detailed analysis of the Committee's Report on the Southern Conference of Human Welfare referred to in the indictments against appellants Smith and Dombrowski, see Gellhorn, *Report on a Report of the House Committee on Un-American Activities*, 60 Harv. L. Rev. 1193 (1947).

Moreover, the complaint alleged (R. 5), and the appellants offered to prove (R. 26-28, 54) that the statute was being applied to them in an unconstitutional fashion and solely because of their opposition to the official segregation policy of the State of Louisiana.⁴ There is no question that the appellants were entitled to introduce such evidence, and, if the facts supported their allegations, were entitled to relief. *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210; *N.A.A.C.P. v. Alabama*, 357 U.S. 449; *Bates v. Little Rock*, 361 U.S. 516; *Louisiana v. N.A.A.C.P.*, 366 U.S. 293; *N.A.A.C.P. v. Button*, 371 U.S. 415.

The majority's grounds for denying appellants the opportunity to offer such evidence has no precedent in this or any other court and are plainly irrational. So far as we have been able to determine, the argument (R. 74), that appellants must be denied their day in court because at such hearing appellees would also be entitled to introduce evidence, is original with the majority below. We trust that the decision of this Court will forestall its gaining adherents in other jurisdictions. The further objection that a public hearing in a United States Federal District Court would be a "Star Chamber proceeding with all the 'foldorol' and publicity attendant therewith" (R. 74) is as frivolous as it is unintelligible.⁵

⁴ The appellants contended (R. 54) that "their arrest and the search of their offices and homes was to intimidate them as attorneys acting in furtherance of Civil Rights cases . . ."

⁵ The court may have been legitimately concerned with the extravagant character of some of the defendants in this action. Thus, according to paragraph 15 of appellant's offer of proof (R. 26-27), the defendants who conducted the unlawful raid on appellants' homes and offices were quoted as not informing the FBI of the raid because "We knew that if we told the FBI about

Equally without merit is the majority's conclusion that appellants may be unconstitutionally persecuted because "here the very vitals of our constitutional system of government are on the line" (R. 74). What is "on the line" is the effort of the State of Louisiana to preserve its unconstitutional system of white supremacy in defiance of this Court's opinions. As Judge Wisdom's dissenting opinion put it (R. 90), "the Louisiana legislature regards the movement to increase Negro voting in the State as part of the Communist conspiracy."⁶ And the growing effort to equate Negro protest with Communism is only one aspect of the southern states' techniques of nullifying federal court decisions in the area of civil rights, see Lusk, *Racial Discrimination and the Federal Law: A Problem in Nullification*, 63 Columbia L. Rev. 1163, 1173-4 (1963).

Because of its flagrantly unconstitutional nature, we have no doubt as to the eventual fate of this effort of the State of Louisiana to harass and persecute appellants. But the prospect that appellants can, after prosecution and conviction in the Louisiana courts, eventually come to this Court for relief to strike down

this raid, they would have to tell Bobby Kennedy. We cannot trust him and we expect him to tell his friend, Martin Luther King." However legitimate may have been the concern to protect the public reputation of Louisiana state officials, it is not sufficient ground to deny appellants relief. On the contrary, it only serves to demonstrate that appellants can obtain relief only in a federal tribunal.

⁶ Unfortunately, the Louisiana legislature is not unique in this respect. "It would be blinking reality not to acknowledge that there are some among us always ready to affix a Communist label upon those whose ideas they violently oppose. And experience teaches us that prosecutors too are human." *Cramp v. Board of Public Instruction*, *supra* at 286-287.

this unconstitutional action, is hardly an adequate remedy. Since appellants are practicing attorneys in the State of Louisiana, the harm that would be done to them, their reputations and their practice of law in the intervening years would be irreparable. Appellants are being victimized because they are, in the hostile climate of the State of Louisiana, staunch supporters of the principles enunciated by this Court. They deserve more than the promise of future vindication in this Court in the years to come.

The judgment below should be reversed with directions to grant the relief prayed for in the complaint.

Respectfully submitted,

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SEP 25 1964

JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1964

No. 52

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE
EDUCATIONAL FUND, INC.,

Appellants,

BENJAMIN E. SMITH and BRUCE WALTZER,

Appellants-Intervenors,

against

JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, RUSSELL R. WILLIE, individually and as Major of the Louisiana State Police Department, JIMMIE H. DAVIS, individually and as Governor of the State of Louisiana, JACK P. F. GREMILLION, individually and as Attorney General of the State of Louisiana, COLONEL THOMAS D. BURBANK, individually and as Commanding Officer of the Division of Louisiana State Police, and JIM GARRISON, individually and as District Attorney for the Parish of Orleans, State of Louisiana,

Appellees.

BRIEF FOR APPELLANTS AND APPELLANTS-INTER- VENORS ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

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Supreme Court of the United States

October Term, 1964

No. 52.

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE
EDUCATIONAL FUND, INC.,

Appellants,

BENJAMIN E. SMITH and BRUCE WALTZER,
Appellants-Intervenors,

against

JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, RUSSELL R. WILLIE, individually and as Major of the Louisiana State Police Department, JIMMIE H. DAVIS, individually and as Governor of the State of Louisiana, JACK P. F. GREMILLION, individually and as Attorney General of the State of Louisiana, COLONEL THOMAS D. BURBANK, individually and as Commanding Officer of the Division of Louisiana State Police, and JIM GARRISON, individually and as District Attorney for the Parish of Orleans, State of Louisiana,

Appellees.

**BRIEF FOR APPELLANTS AND APPELLANTS-INTER-
VENORS ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE EASTERN DISTRICT OF
LOUISIANA, NEW ORLEANS DIVISION**

Opinions Below

The opinions of the three-judge District Court are reported at 227 F. Supp. 556, 569 (E. D. La., 1964). The opinion of the majority of the Court, District Judges West and Ellis is set forth in the Record at page 63. The dissenting opinion of Circuit Judge Wisdom is set forth in the Record at page 84.

Jurisdiction

The judgment and orders of the District Court were entered on January 10, 1964 (R. 62) and on February 13, 1964 (R. 63). A Notice of Appeal was duly filed on Janu-

ary 31, 1964 (R. 110), and an amended Notice of Appeal was filed on February 25, 1964 (R. 113), subsequent to the February 13th order of the majority of the Court modifying its order of January 10th. The Jurisdictional Statement was filed on March 23, 1964, and probable jurisdiction was noted on June 15, 1964. Jurisdiction of this appeal is conferred on this Court by Title 28 of the United States Code, Section 1253.

Statutes Involved

The statutes involved are Louisiana Revised Statutes Title 14, Sections 358 through 374, the Louisiana "Subversive Activities and Communist Control Law" and Louisiana Revised Statutes Title 14, Sections 390 through 390.8, the Louisiana "Communist Propaganda Control Law". The texts of these statutory provisions are set forth in full in Appendix A.

Questions Presented

1. Whether Louisiana Revised Statute Title 14, §§ 358-374, the "Louisiana Subversive Activities and Communist Control Law" and Louisiana Revised Statute Title 14, §§ 390 through 390.8, the "Louisiana Communist Propaganda Control Law" on their face violate the First, Fifth and Fourteenth Amendments to the Constitution of the United States?
2. Whether these state statutes have been superseded by federal legislation?
3. Whether these state statutes as applied to the appellants violate the First, Fifth and Fourteenth Amendments to the Constitution of the United States?
4. Whether the Federal District Court improperly declined to adjudicate the issue of the constitutionality of the Louisiana statutes?

5. Whether the Federal District Court had the power and duty to enjoin the enforcement of the Louisiana statutes?

6. Whether the District Court's refusal to permit appellants to adduce evidence as to the constitutionality of the statute as applied violated due process of law?

Statement of the Case

1. Proceedings Below

This is an appeal from an opinion and order of a three-judge Federal District Court convened pursuant to Title 28 U. S. C. Sections 2281 and 2284. The appellants instituted a plenary federal action on November 12, 1963, seeking a declaratory judgment and an interlocutory and permanent injunction restraining the enforcement of the "Subversive Activities and Communist Control Law" and "Communist Propaganda Control Law" of Louisiana, Revised Louisiana Statutes 14:390 through 14:390.5 and 14:358 through 14:388, R. 6.¹ The complaint also asked for

¹ The operation of the statutory scheme is discussed in full in Points I and II of the argument. In short the statute sets up certain operative definitions including "subversive organizations", "foreign subversive organizations", "subversive persons", "communists", "communist party", "communist front organization". Any person falling into these categories remaining in Louisiana after five days are required to register with the State. Failure to register is punishable by penalties up to ten years imprisonment and a fine of \$10,000. Other felonies punishable by the same penalties are created including assisting in the formation or participating in the management or contributing to the support of any subversive or foreign subversive organization and becoming or remaining a member of such an organization. Other penalties are set forth including dissolution of subversive organizations and discharge from public employment of subversive persons. The "propaganda control" sections provide for up to ten years imprisonment and \$10,000 fine for "delivering, distributing, disseminating or storing" in Louisiana what is defined as "communist propaganda".

relief pursuant to Title 42, U. S. C. 1983 and 1985 to protect federally protected constitutional rights.

A three-judge district court was duly convened by the Chief Judge of the Court of Appeals for the Fifth Circuit, R. 8. A temporary restraining order restraining the defendants from proceeding with the criminal enforcement of the state statutes against the appellants was entered by Circuit Judge Wisdom on November 18, 1963, R. 9, 11, and was continued by the Court pending the hearings on appellants' motion for interlocutory relief.

On December 9, 1963, the three-judge Court convened and heard argument on the constitutionality of the state statutes on their face. The Court shortly thereafter ordered a hearing on the question as to whether evidence was admissible as to the constitutionality of the state statutes as applied. This hearing was held on January 10, 1964. At the conclusion of this hearing, the majority of the three-judge court announced in an oral ruling from the bench that (1) the statutes were constitutional on their face, and (2) the complaint failed to state a claim upon which relief could be granted. Accordingly, the majority of the Court set aside and vacated the temporary restraining order previously issued, denied the motion for interlocutory relief, dismissed the complaint and denied a motion for a stay pending appeal to this Court. Circuit Judge Wisdom dissented from each of these rulings, R. 62.

On February 13, 1964, the majority of the Court filed a written opinion and order which modified and vacated certain of its conclusions of January 10th, R. 63, 72. In this opinion the majority of the Court vacated by its own motion its finding of January 10th that the state statutes were constitutional on their face and declined to adjudicate the question of constitutionality, R. 72. The majority of the Court, however, reaffirmed its prior decision denying the application for injunctive relief and dismissing the suit for failure to state a claim upon which relief could be

granted, R. 75. Circuit Judge Wisdom filed separately his opinion dissenting from the rulings of the majority of the Court, R. 84. He would find that:

(1) the state statutes here involved are unconstitutional on their face in violation of the First and Fourteenth Amendments to the Constitution of the United States;

(2) the state statutes here involved are superseded by existing federal legislation and their enforcement is accordingly suspended;

(3) the complaint stated a cause of action for relief and may not be dismissed;

(4) the refusal to permit the appellants to adduce evidence as to the constitutionality of the statute as applied violated their rights to due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States. The majority refused to issue a stay pending the appeal to this Court, Judge Wisdom dissenting (R. 63).

The appellants have appealed to this Court from each and every ruling of the majority of the three-judge District Court. Probable jurisdiction was noted on June 15, 1964.

2. Statement of the Facts

There is no dispute as to the material facts of this case. Both the majority of the three-judge court and Circuit Judge Wisdom dissenting, accepts as true for the purposes of this appeal all of the allegations in the complaint (R. 65).

The facts material to the consideration of the questions presented are set forth in both the majority and dissenting opinions. They are as follows:

The appellant Southern Conference Educational Fund, Inc. (hereinafter referred to as "SCEF"), is an association whose guiding principle for many years has been to seek to improve economic, social and cultural standards

in the South in accordance with the highest American institutions and ideals. Its principal purposes have been (1) to promote civil rights for Negro citizens by eliminating segregation and all forms of discrimination based on race, and (2) to bridge the existing gulf between them and the white citizens of their local communities (R. 5, 56). In seeking to attain these objectives, it has utilized all available lawful and non-violent means of communication and education including public speaking, correspondence and the publication and distribution of pamphlets, books and a newspaper (R. 5, 56).

Appellant James A. Dombrowski is SCEF's Executive Director and possesses a Doctor of Philosophy degree from Union Theological Seminary (R. 55).

The two appellant-intervenors, Benjamin E. Smith and Bruce Waltzer, are practicing lawyers in New Orleans, Louisiana (R. 18). Smith is SCEF's Treasurer (R. 19), while Waltzer, his law partner, has no connection with it other than professional representation (R. 19, 52). They have been extremely active in civil rights cases in both Louisiana and Mississippi (R. 51). In addition to their substantial private practice, they have represented Negro citizens who are seeking to obtain the rights guaranteed to them by the Constitution of the United States. As two of the handful of Southern white lawyers involved in desegregation litigation, they are presently counsel of record for hundreds of such Negro citizens in these two states. In addition, they have represented the American Civil Liberties Union in the State of Louisiana in a substantial number of cases (R. 50).

On October 4, 1963, during the holding of the first interracial lawyers' conference in the recent history of the City of New Orleans, Smith, Waltzer and Dombrowski were arrested by police officials on warrants charging violation of the Louisiana anti-subversion laws (R. 50-51). Their offices were raided and files and records, including legal files,

seized (R. 18). The circumstances of the arrests are concisely set forth in Judge Wisdom's opinion (R. 92):

"At gunpoint their homes and offices were raided and ransacked by police officers and trustees from the House of Detention acting under direct supervision of the staff director and the counsel for the State Un-American Activities Committee. The home and office of the director of Southern Conference Educational Fund were also raided. Among the dangerous articles removed was Thoreau's Journal. A truckload of files, membership lists, subscription lists to SCEF's newspaper, correspondence, and records were removed from SCEF's office, destroying its capacity to function. At the time of the arrests, Mr. Pfister, Chairman of the Committee, announced to the press that the raids and arrests resulted from 'racial agitation'. An able, experienced, and independent-minded district judge of the Criminal District Court for the Parish of Orleans, after hearing evidence, discharged the plaintiffs from arrest on grounds that the arrest warrants were improvidently issued and that there was no reasonable cause for the arrests."

The discharge of the appellants referred to by Circuit Judge Wisdom occurred in Section "E" of the Criminal Court for the Parish of Orleans on October 25, 1963. After hearing evidence, Judge J. Bernard Coker, a veteran member of that bench, summarily vacated the warrants of arrest, holding that "there are no facts whatsoever to justify this Court binding these three defendants over for trial in the established manner of law."² Accordingly, he ordered the discharge of Smith, Waltzer and Dombrowski.

Despite this ruling, however, Representative Pfister and the Louisiana Joint Legislative Committee on Un-

² Subsequently, a motion to suppress the seized evidence was granted on the ground that the October 4th raid was illegal. See No. 183459, Criminal District Court for the Parish of Orleans, Section "B", June 12, 1964.

American Activities nevertheless publicly demanded the immediate criminal enforcement of the so-called state anti-subversion laws against appellants. The Joint Committee has been established by the Louisiana Legislature for the purpose of supervising the enforcement of the state statutes in issue here. See Point I, *infra*.

The appellants then turned to the Federal courts for protection against this serious and imminent threat to their fundamental constitutional rights. They sought a declaratory judgment and permanent and interlocutory injunctive relief restraining the enforcement of these state statutes as unconstitutional on their face and as applied, and as superseded by existing federal legislation. In addition, they sought permanent and interlocutory relief under Title 42 U. S. C. 1983 and 1985 against a conspiracy under color of state law to deprive them of rights, privileges and immunities guaranteed to them under the Constitution and laws of the United States.³

Immediately after the filing and serving of this complaint and the convening of a three-judge District Court pursuant to Title 28 U. S. C. 2281, a grand jury was summoned in the Parish of New Orleans to consider returning indictments against the individual appellants in response to the insistent demands by Representative Pfister for enforcement of the so-called anti-subversion laws. Circuit Court Judge Wisdom thereupon issued a temporary restraining order restraining any prosecutive action against the appellants pending the hearing and determination of the cause by the three-judge court. This restraining order was in effect until its dissolution by the majority of the court on January 10, 1964, Judge Wisdom dissenting (R. 63).

³ In addition to this litigation, appellants also brought suits for damages under the Civil Rights Acts in the United District Courts for the Eastern District of Louisiana, *Dombrowski v. Burbank*, Civil Action No. 13967, and the District of Columbia, *Dombrowski v. Burbank*, Civil Action No. 2678-63. Both actions are presently pending.

The complaint charged (R. 5) and the appellants sought to prove by affidavits and in a written offer of proof⁴ that the threatened enforcement of these state laws is in every respect an attempt to enforce Louisiana's policy of racial segregation (R. 23-29). The appellants asserted and offered

⁴ In addition to attached affidavits and allegations as to the character of appellants, the nature of their civil rights activities and their freedom from communism, communist control and subversion, the offer of proof sets forth the following facts:

(a) that the raids of October 5, 1963 took place pursuant to search and seizure warrants signed on October 2, 1963.

(b) that said search and seizure warrants were based on wilfully inaccurate affidavits and that both the warrants and the affidavits are invalid on their face.

(c) that by virtue of these warrants great quantities of materials bearing absolutely no relationship to the warrants or to any legitimate investigative purposes were seized for the sole and exclusive purpose of destroying the effectiveness of appellants' civil rights activities.

(d) that none of the seized materials reveal any criminal activities whatsoever on the part of appellants but indicate only the legitimate nature of their civil rights activities.

(e) that following the vacation of the aforesaid warrants of arrest by the Criminal District Court for the Parish of Orleans, appellees publicly proclaimed that they were going to obtain indictments for violation of the statutes involved herein.

(f) that the purpose of the threatened indictments was to curtail appellants' civil rights activities as well as those of organizations with which they might be affiliated.

(g) that the law practice of Smith and Waltzer, including their ability to handle civil cases, has been adversely affected by the aforesaid charges and indictments.

(h) that pursuant to R. S. 14:358 and 14:390 practically all civil rights organizations would fall within their purview. Furthermore, it is impossible for any person or organization to comply with the statutes, and particularly with the registration requirements thereof. Moreover, the presumption set forth in R. S. 14:359(3) is unreasonable.

(i) that the statutes were enacted solely and exclusively for the purpose of being applied to individuals and organizations active in the civil rights field.

to prove that the arrests, the raids, the seizure of books, files, membership lists and the threatened imprisonment of the appellants was a conscious effort to frighten, intimidate and deter the appellants and thousands upon thousands of Negro citizens of Louisiana and those white citizens courageous enough to support them from challenging the denial by the State of equality under the law to its Negro citizens (R. 23-29).

Circuit Judge Wisdom summarized sharply the factual thrust of the complaint:

"The distinguishing feature of this case, which the majority chooses to ignore, is the contention that the State, under the guise of combatting subversion, is in fact using and abusing its laws to punish the plaintiffs for their advocacy of civil rights for Negroes. It so happens that the plaintiffs contend that the Louisiana Anti-Subversion Law is unconstitutional and, besides, has been superseded by congressional legislation. If those contentions are sound, unquestionably the plaintiffs have a right to relief in the federal court. But the deep thrust of the complaint is the State's abuse of its power as to the plaintiffs. If the evidence on this point should support the plaintiffs, they would be entitled to relief—even if the law were clearly constitutional".

And in the same context Judge Wisdom characterized appellants' offer of proof to support the complaint:

"As emphasized earlier, the plaintiffs contend that, even if the law is valid on its face, the State has searched their homes and offices, seized their property, arrested them, and is about to prosecute them not because they are Communists—they deny any connection with communism—but because their thinking is not compatible with the State's segregation policy. The plaintiffs offer proof in the form of affidavits and witnesses willing to testify".

The majority of the Court refused to hear any evidence, declined to act on the constitutional issues pre-

sented under the assumption that the complaint failed to state a cause of action for relief, and totally abdicated any federal responsibility resting upon what Circuit Judge Wisdom characterizes as "a sort of visceral feeling that somehow, if relief were granted, the Court would be impinging on States' Rights" (R. 85).

Following the vacating of the restraining order prohibiting prosecutive action Dr. Dombrowski was indicted for violation of Rev. Stat. Title 14, Section 360, for failing to register with state authorities as a member of the Southern Conference Educational Fund, charged with being a "communist-front" organization in that it was "essentially the same as the Southern Conference for Human Welfare" cited by the House Committee on Un-American Activities in 1944 and 1947 as a communist front organization. This count carries a penalty of 10 years imprisonment and \$10,000 fine. A second count charged Dr. Dombrowski with participating in the management of a "subversive organization" in that he was Executive Director of the Southern Conference Educational Fund. This count carries an identical penalty.

Benjamin Smith was indicted on three counts for being a member of Southern Conference, its Treasurer, and for being a member of the National Lawyers Guild. Bruce Waltzer was indicted solely for being a member of the National Lawyers Guild. The indictments are set forth in full in Appendix B.

As has already been indicated, the evidence seized during the raid of October 5, 1963 was ordered suppressed by Judge Platt. The state has appealed from this ruling. At this time the indictments against appellants are still pending.

Summary of Argument

This appeal involves the constitutionality of the Louisiana "Communist Control and Subversive Activities Law" and the "Communist Propaganda Control Act". The appeal raises the issue of the constitutionality of the state legislation on its face, its enforceability under the doctrine of federal supersedure, and the power and the duty of the federal district court to adjudicate the questions and restrain the enforcement of the state legislation.

I

The Louisiana legislation on its face violates the First and Fourteenth Amendments to the Constitution of the United States. The opinion of this Court last June in *Baggett v. Bullitt* is wholly dispositive. The Louisiana statute is identical in its operative provisions with the Washington statute struck down in *Baggett*. The Louisiana additions to the Washington statute merely accentuate its constitutional invalidity.

II

1. The Louisiana legislation is so broad in its sweep, vague and indefinite in its definitions and characterizations of prohibited activity as to fail to meet the most minimal standards of the First and Fourteenth Amendments. The statute patently violates every guiding principle enunciated by this Court over the years to protect the fundamental freedoms embraced in the First and Fourteenth Amendments.

2. The extreme vagueness and overbreadth of the key operative definitions of the statute such as "subversive organization", "subversive person", "communist", "communist party", "communist front organizations", "communist conspiracy" and "communist propaganda" lends itself to selective enforcement against locally unpopular

causes. Its origin and the setting in which it operates reveals that the Louisiana statute is designed and utilized as an instrument in that State's many-faceted efforts to maintain segregation as Louisiana's way of life and to repress the efforts of Negro and white citizens to achieve the equal rights guaranteed by the Constitution and the laws of the United States.

3. The registration provisions of the statute and the criminal sanctions which enforce them, violate on their face the First, Fifth and Fourteenth Amendments. The definitions of "subversive organization" and "communist-front organization" upon which the requirement of registration mainly rests are unduly vague and indefinite constituting a dragnet sweeping into the orbit of the statute all organizations and persons seeking equal civil rights for Negro citizens in Louisiana. The statutory presumption of the proscribed status of such an organization based upon designations by Congressional Committees or other Federal agencies itself violates the Due Process Clause. Criminal sanctions may not rest upon non-judicial, *ex parte* Congressional designations. The method of identification further violates the Due Process Clause by creating an unconstitutional presumption of guilt.

The registration provisions violate the First and Fourteenth Amendments by inhibiting the exercise of individual freedoms affirmatively protected by the Constitution. The registration provision sweeps within its prohibition both knowing and unknowing members of proscribed organizations, and renders irrelevant the member's degree of activity in the organization and his commitment to its purpose.

The registration provisions further violate the Fourteenth Amendment by interfering with and impeding the fundamental right of citizens to travel freely within the borders of the United States from state to state without

restriction and limitation. The registration provisions further violate the constitutional privilege against self-incrimination safeguarded against state action by the Fourteenth Amendment. These provisions are a naked effort to force citizens to incriminate themselves under both state and federal laws.

4. The Louisiana statute violates the guiding principle of the First Amendment that even though government design be legitimate and substantial its purpose may not be pursued by means which broadly stifle fundamental liberties. The Louisiana legislation is not drawn narrowly to meet a legitimate government purpose. Both the context within which the statute was enacted and its threatened enforcement against the appellants underscores the intention of the state to utilize the unlimited and indiscriminate sweep of the statute to invade the area of constitutionally protected freedoms.

5. The enactment and attempted enforcement of the statute is another in many recent efforts to use the legislative power of certain Southern states to hamper, restrict or outlaw associations of Negro and white citizens who join together to seek implementation and enforcement of the Equal Protection Clause and the Fifteenth Amendment. The present statute in its entirety is a naked attempt to restrict and inhibit the fundamental constitutional right of freedom of association, through its incredibly broad dragnet provisions, its built-in presumption of guilt and its sweeping proscriptions against membership in organizations and the possession of books and literature. It is in its total effect a gigantic prior restraint upon the exercise of all First Amendment liberties.

III

The Louisiana legislation has been superseded by federal legislation. Among the federal statutes superseding the state enactments are the Smith Act of 1940, the Internal

Security Act of 1950 and the Communist Control Act of 1954.

Under the decision of this Court in *Commonwealth of Pennsylvania v. Nelson*, 350 U. S. 497, the Louisiana statutes have been superseded and may not be enforced. The considerations which led to the *Nelson* conclusion remain valid today. The scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the states to supplant it. The statutes involved touch a field in which federal interest is so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject. And the enforcement of the state laws present a serious danger of conflict with the federal program and national policy.

The decision of the Court in *Uphaus v. Wyman*, 360 U. S. 77 has not overruled *Nelson*. Under the *Uphaus* test the Louisiana statutes are superseded in that they prescribe the same "conduct" as Congress did in the federal legislation. The rule of *Nelson* continues to govern attempts by the states to intrude into areas of legislation preempted by the national government.

IV

1. The majority of the district court refused to adjudicate the issues except as to preemption and dismissed the complaint. The rationale for this action is not clear but seems to rest upon what Circuit Judge Wisdom characterizes in his dissenting opinion as "a sort of visceral feeling that somehow, if relief were granted, the Court would be impinging on State's Rights". But the power of a federal district court to enjoin the enforcement of unconstitutional state laws is not open to question. The assertion of a State's "right to self-preservation" does not in and of itself negate the existence of federal judicial power to restrain the enforcement of state laws which violate the Federal Constitution.

2. The district court had equitable power to restrain the enforcement of the criminal provisions of the state statute. This Court has consistently reaffirmed the principle that federal equity power exists to restrain state criminal statutes or proceedings which threaten immediate and irreparable injury to fundamental constitutional rights. The Fourth and Fifth Circuits have recently restated forcefully the necessity for the use of federal equity power where state criminal statutes or proceedings interfere with or impede the exercise of fundamental federal constitutional rights. The enjoining of the enforcement of an unconstitutionally vague statute which inhibits the present exercise of basic constitutional liberties is a classic exercise of equitable power to prevent immediate and irreparable injury.

3. Title 28 U. S. C. 2283 is no bar to the enforcement of the Louisiana statute. The federal plenary action attacking the constitutionality of the statute was brought prior to the institution of any state court proceedings. It is settled law that Section 2283 does not bar injunctive relief where the federal action is brought prior to the state proceedings.

4. The decision of this Court in *Baggett v. Bullitt*, *supra*, disposes of any contention that the district court properly abstained from adjudicating these questions and enjoining the enforcement of the Louisiana statute. As in *Baggett* the special circumstances justifying an application of the doctrine of abstention are not present here. Under the decision in *Baggett* where an unconstitutionally vague state statute inhibits the exercise of First Amendment freedoms and deters constitutionally protected conduct a federal district court may not abstain from adjudication and relief. The recognition of the primacy of the federal judiciary in deciding questions of federal law requires this conclusion. The issues presented to the district court were fundamental questions of federal law falling within the special competence of the federal court system. The basic

principles of comity underlying the doctrine of abstention require that the Federal system recognizes its "primacy" and its "competence" and accepts its "duty" to adjudicate. This is required if American Federalism is to work.

V

The refusal of the majority below to permit any evidence to be adduced as to the constitutionality of the statute as applied violated due process of law. Evidence tending to show that a state statute is unconstitutional as applied is clearly admissible. The denial of the right to adduce such evidence out of a fear of the "publicity attendant" violated the most elementary principles of due process of law.

POINT I

The Louisiana statute violates on its face the First and Fourteenth Amendments to the Constitution of the United States.

1. The Opinion of the Court in *Baggett v. Bullitt* is Dispositive.

The opinion of this Court last June in *Baggett v. Bullitt*, 377 U. S. 360, handed down after the filing of the jurisdictional statement in the present appeal, is wholly dispositive of the questions here presented. This decision striking down the provisions of the Washington statute before the court in *Baggett* settles definitively the issue of the constitutionality on its face of the Louisiana statute here challenged.⁵

The statutory scheme of the Louisiana legislation is identical in all essential aspects to the Washington legis-

⁵ The opinion in *Baggett* is also dispositive of the jurisdictional questions raised below by the majority of the three-judge court. See Point III, *infra*.

lation struck down in *Baggett*. The decisive operative definitions of "subversive organization," "foreign subversive organizations" and "subversive person" in the Washington legislation which render the statute void on its face as "unduly vague, uncertain and broad," *Baggett*, 366, are in *haec verba* the decisive operative definitions in the Louisiana legislation.

The Washington and Louisiana statutes were obviously the product of the same draftsmen. The only substantial variations in the Louisiana statute from the Washington statute already invalidated by the Court last term compound in an aggravated fashion the constitutional infirmities.

The Washington statute defines a "subversive person" as one who commits an act or who advises, teaches, abets or advocates by any means another person to commit or aid in the commission of any act intended to overthrow or alter, or to assist the overthrow or alteration of the constitutional form of government by revolution, force or violence. A "subversive organization" is defined as one which engages in or assists activities intended to accomplish such ends, or has as a purpose the commission of such acts. The statute then "presumes," that the Communist Party does and will engage in such activities. *Baggett* at p. 367. The combination of these "sweeping statutory definitions" sets up broad dragnets which "abut upon sensitive areas of basic First Amendment freedoms. *Baggett* at p. 372.

The Louisiana statute establishes the identical scheme and must be stricken down for the same reasons. The Louisiana embroidery upon the invalid Washington statute merely accentuates the vagueness of the statute presently before the Court. The Louisiana legislature has added to the invalid Washington provisions additional definitions and penal provisions far more sweeping than those the Court has already voided in *Baggett*. We discuss later

the independent invalidity of these provisions.⁶ It is sufficient, however, at this point to indicate that Louisiana's additions to the Washington statute—the limitless presumptions and broadly ranging categories of the so-called “Communist-front” definitions and the extraordinary language in the “Communist propaganda” provisions—were hardly designed to limit or circumscribe the provisions set up by the statutory scheme which this Court has only this June rejected in *Baggett*. The Louisiana statute, identical in its basic definitions and structure to the Washington statute, has already been condemned by this Court in *Baggett*. The additional dragnet devices merely confirm the constitutional necessity for the prior condemnation.

2. The entire Louisiana statutory scheme is unconstitutionally vague, uncertain and broad.

The Washington and Louisiana statutes are so broad in their sweep, so vague and indefinite in their definitions and characterizations of prohibited activity that they fail to meet the most minimal standards of the First and Fourteenth Amendments. *Baggett v. Bullitt*, *supra*; *Aptheker v. Secretary of State*, 375 U. S. 928, 84 S. Ct. 1649; *Bowie v. City of Columbia*, 378 U. S. 347, 84 S. Ct. 1697; *Wright v. Georgia*, 373 U. S. 284; *NAACP v. Button*, 371 U. S. 415; *Smith v. California*, 361 U. S. 147, 151; *Winters v. New York*, 333 U. S. 507, 509-510, 517-518; *Herndon v. Lowry*, 301 U. S. 242; *Strömberg v. California*, 283 U. S. 359; *United States v. CIO*, 335 U. S. 106, 142. The unlimited commands of the statutes conflict sharply with the fundamental guarantees of free speech, assembly, association and the right to petition for redress of grievances. *Baggett v. Bullitt*, *supra*; *Gibson v. Florida Committee*, 372 U. S. 539; *Cramp v. Board of Public Instruction*, 368 U. S. 278. And as this Court restated in *Baggett* its holding in *Cramp*,

⁶ See Point 2(a)(b), *infra*.

these statutes fall "within the compass of those decisions of the Court holding that a law forbidding or requiring conduct in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates due process of law. *Connally v. General Construction Co.*, 269 U. S. 385; *Lanzetta v. New Jersey*, 306 U. S. 451; *Joseph Burstyn, Inc. v. Wilson*, 343 U. S. 495; *United States v. Cardiff*, 344 U. S. 174; *Champlin Refining Co. v. Corporation Comm'n of Oklahoma*, 268 U. S. 210." *Baggett*, at p. 367. *Bowie v. City of Columbia*, 378 U. S. 347, 84 S. Ct. 1697.

The most cursory examination of the Louisiana statute reveals a vagueness and over-breadth trenching upon First Amendment liberties more sweeping than any state statutory regulations in this delicate area previously considered by this Court. The statutory definitions and penal prescriptions patently violate every guiding principle this Court has developed over the years to protect the freedoms embraced in the First and Fourteenth Amendments.

We have already called to the Court's attention the identity in language between the Washington and Louisiana provisions defining "subversive organizations," "foreign subversive organization" and "subversive person." Under the Court's decision in *Baggett* these provisions, essential to the operation of the entire statutory scheme, must fall as "unduly vague, uncertain and broad." *Baggett*, at p. 366. The other Louisiana provisions which supplement the Washington statutory complex are equally unconstitutional. . . vague.

(a) The definition of "Communist" and "Communist Party" in Section 359(1) and (2).

A striking example of the over-breadth of language which turns this statute into "a dragnet which may enmesh anyone," see *Herndon v. Lowry, supra*, is the critical definition of a "communist" or a member of the "Communist

Party." According to the terms of the statutes the "Communist Party" includes within its orbit "any organization which in any manner advocates or acts to further the success of the program of world domination of the international communist conspiracy." Section 359(2). A "communist" is accordingly any person who is a member of such an organization, or who is "proven to be substantially under the discipline and control of the International Communist Conspiracy." Section 359(1). All of the serious criminal and civil sanctions imposed by the statute rest upon this basic definition. See Sections 360, 361, 362, 364, 365, 366, 367, 369. By definition anyone who is a "communist" is also obviously a "subversive person" and a member of a "subversive," if not a "foreign subversive" organization.⁷ These definitions of "communist" and "Communist Party" are clearly decisive to the entire operation of the statute. But the words here used are simply not "susceptible of objective measurement." *Cramp v. Board of Public Instruction, supra*, at p. 286. As this Court pointed out in *Cramp*, these words permit an "extraordinary sweep." Any organization or group of people, formal or informal, which engages in any activity in the State of Louisiana which may be construed by prosecution officials to parallel or coincide with "in any manner" any of the objectives, immediate or long-range, of what is characterized without any further definition anywhere in the statute as the "Communist Conspiracy" may fall within the proscribed area.

This is no academic or remote possibility. As Judge Wisdom points out in his dissenting opinion in describing the over-breadth of this statutory language:

"This Court knows from other litigation, particularly *United States v. Louisiana, E.D. La., Civil*

⁷ The preamble, Section 358, makes it amply clear that a "communist" is within the scope of the definition of "subversive person" and is a member of a "subversive organization". Cf. *Baggett*, p. 367, footnote 6.

Action No. 2548, that the Louisiana legislature regards the movement to increase Negro voting in the State as part of the Communist conspiracy. All of the organizations promoting increased Negro voting registration therefore fall within the definition of 'communist party,' and any member could be prosecuted under the Louisiana Anti-Subversion Law."

And as this Court recently said in *NAACP v. Button*, *supra*:

"It makes no difference whether such prosecutions or proceedings would actually be commenced. It is enough that a vague and broad statute lends itself to selective enforcement against unpopular causes * * *. Its mere existence could well freeze out of existence all such activity on behalf of the civil rights of Negro citizens."

The constitutional vice of over-breadth raised by these Louisiana statutes is as serious as the problems considered by this Court in *NAACP v. Button* and *Cramp v. Board of Public Instruction*, both *supra*. As Judge Wisdom points out, these statutes were enacted by a state legislature which "regards the movement to increase Negro voting in the state as part of the communist conspiracy." See *United States v. State of Louisiana*, 225 F. Supp. 353, 378 (1963), prob. jur. noted 377 U. S. 987, (1964). The same legislature which in 1954 enacted the substantial features of the present statute designed to protect the "form of government" of Louisiana, also created a Joint Legislative Committee to "provide ways and means whereby our existing social order shall be preserved and our institutions and ways of life * * * maintained." This objective of preserving the "existing social order" was to be accomplished by a program "to maintain segregation of the races in all phases of our life in accordance with the customs, traditions and laws of our State." La. Legislature, House Concurrent Resolution No. 27 (1954). See *United States v. State of Louisiana*, *supra*, at p. 378.

The subsequent history of the legislation is equally revealing. The principal state legislative agency presently responsible for the "operation, effect, administration, enforcement and needed revision"⁸ of these laws is the Louisiana Joint Legislative Committee on Un-American Activities. The genesis of this Committee, responsible for the present 1960 version of the statute, is further indicative of the true thrust of the statute, for as the Court said in *Button v. NAACP, supra*, one must look "to the origins of the State Law and the setting in which it operated to find its discriminatory nature."

On May 16th, 1960, Governor Davis submitted to the regular Spring Session of the Legislature a series of proposals which in his words were "designed to preserve segregation and at the same time maintain law and order in our state."⁹ This "segregation" package was designed as a response to the efforts of the Federal Courts in the Fifth Circuit to enforce the decision of this Court in *Brown v. Board of Education* and subsequent opinions invoking the Equal Protection Clause. See the full discussion of the Louisiana legislative attempts to circumvent the impact of *Brown* set forth in *Bush v. Orleans Parish School Board*, 194 F. Supp. 182, E. D. La., three judge court, opinion by Rives, C. J.

On May 18th the segregation "package" was introduced "aimed at Negro sitdowns at white lunch counters and other demonstrations."¹⁰ On May 19th, three legislators, James Pfister, George Tessier of Orleans Parish and Alger Brown of Caddo Parish added their contributions to the solution of the problems presented by Governor Davis the day before. This was a House Concurrent resolution pro-

⁸ Louisiana House Concurrent Resolution #13, Regular Session, 1960.

⁹ *New Orleans Times-Picayune*, May 17, 1960, pages 1, 4.

¹⁰ *New Orleans Times-Picayune*, May 18, 1960, p. 19.

posing the establishment of a joint legislative committee on Un-American Activities. This was introduced as Resolution #13, of the 1960 Regular Session.¹¹ On June 15, 1960, the entire "segregation package" as it was commonly known, was passed by both houses, including Resolution #13 which was signed by the President of the Senate. It is perfectly clear that the establishment of the Joint Committee on Un-American Activities and the subsequent rewriting and enforcement of the "anti-subversive" legislation were designed to be an additional weapon in Louisiana's all-out battle to retain segregation as "our existing social order" and "way of life," see *United States v. Louisiana, supra*. The statement of the predecessor Joint Committee, set up two years earlier, known as the "Segregation Committee," after the introduction of Joint Resolution #13 and prior to its passage together with the entire package, is most revealing. On May 25th, 1960, the *New Orleans Times-Picayune* reported that "The Committee contends that espousal of integration in the South is a primary goal of the Communist Party in the United States at this time."¹² Nothing could more clearly indicate both the "origin" and "setting" of the legislation presently before the Court. Cf. *Button*. The Louisiana legislature and both its Joint Committees frankly viewed the entire area of "communist control" as another instrument in its efforts to repress the integration movement and maintain segregation as Louisiana's "way of life."¹³ Cf. *United States v. Louisiana, supra*.

¹¹ *New Orleans Times-Picayune*, May 19, 1960, p. 4.

¹² *New Orleans Times-Picayune*, May 25, 1960, Section 2, p. 4.

¹³ This Court has had the occasion only recently to comment upon the "context" and "origin" of another Louisiana statute enacted during the same 1960 legislative session. In *Anderson v. Martin*, 375 U. S. 399, 403, the Court wrote in respect to Louisiana R. S. 18:1174.1, "this addition to the statute in the light of 'private attitudes' and pressures towards Negroes at the time of its enactment,

In *Cramp* this Court warned that "it would be blinking reality not to acknowledge that there are some among us always ready to affix a communist label upon those whose ideas they violently oppose." *Supra*, at p. 286. The context within which these statutes were passed and their attempted enforcement against these appellants (cf. *NAACP v. Button, supra*) reveal their constitutional invalidity. These statutes on their face lend themselves to

could only result in that 'repressive effect' which 'was brought to bear only after the exercise of governmental power.' *Bates v. Little Rock* * * *.

A graphic illustration of the true objectives of the Joint Legislative Committee which throws additional light upon the purpose behind the "selective enforcement" of the statute were the recent legislative moves in the Louisiana Senate this year concerning the future of the Committee. The first proposal made by the new administration of Governor McKeithen was to create a new Louisiana State Security Commission which would replace the Louisiana State Sovereignty Commission and the Joint Legislative Committee on Un-American Activities. *New Orleans Times-Picayune*, May 19, 1964. The reasons advanced for the "absorption of the Un-American Activities Committee", were as follows: "Committee sources said the committee had outlived its usefulness and its work was duplicated by the Sovereignty Commission". (Emphasis added). *New Orleans Times-Picayune*, May 10, 1964. After some backing and filling an agreement was reached to continue the Joint Committee's separate existence. In the course of debate there was consensus of opinion from both supporters and opponents of continuing the separate existence of the Committee on the Committee's preoccupation with civil rights and anti-segregation activity. Thus Senator J. D. DeBlieux of Baton Rouge, in opposing continued separate existence said as reported in the *New Orleans Times-Picayune*, June 30, 1964, "I can't see", he said, "where they have discovered all that much un-American activities." "Often," he said, "the committee has concerned itself more with states rights and segregation than with un-American activities." And in support of continued separate existence Senator George Tessier of New Orleans, one of the three original authors of the legislation said, "Under the guise of objecting to a deadhead committee the whole purpose of the committee is lost." * * * "There has been a lot of confusion," he said, "on civil rights and communism and the basic principle of Americanism." *New Orleans Times-Picayune*, June 30, 1964.

"selective enforcement" which may result in "broadly curtailing group activity" and may "easily become a weapon of oppression." Cf. *NAACP v. Button*, *supra*.

The interrelation between the definitions of "communist" and "communist party" with the other provisions and definitions of the statute leads again to the same conclusion. For example, the definition of "organization" is so broad and loosely drawn as to sweep within its ken any conceivable association or grouping of people. Cf. *Herndon v. Lowry*, *supra*; *Stromberg v. California*, *supra*.

Is it therefore an "absurdity," cf. *Cramp*, *supra*, to suggest that an organization or informal group of individuals which sought by active means to abolish the system of segregation in the State of Louisiana might well find itself caught up in this dragnet definition? Even peaceful protest has been characterized by certain state authorities in Louisiana as "illegal" methods of obtaining social change. Cf. *CORE v. Douglas*, 318 F. 2d 95, (CA 5, 1963). And is it an "absurdity" to suggest that it is possible that authorities of this State consider the system of segregation to be deeply ingrained into the "constitutional form of government of the State of Louisiana"? Cf. *Bush v. Orleans Parish School Board*, *supra*.

We do not have to speculate as to whether in affixing "a communist label upon those whose ideas they violently oppose," *Cramp* at p. 286, the Louisiana authorities will seek to utilize these vaguely drawn statutory criteria for "selective enforcement against unpopular causes." *Button* at p. 434. The Joint Legislative Committee on Un-American Activities, the legislative agency responsible for the supervision of the statutes here involved¹⁴ was admittedly primarily responsible for the indictments of these appellants, an officer of a civil rights association and two civil rights attorneys. These were the first prosecutions under

¹⁴ See House Concurrent Resolution #13, Regular Session, 1960.

the statutes since the State Supreme Court had held an earlier version of the law superseded by federal legislation,¹⁵ and any illusions as to the purpose of this "selective enforcement," *Button*, at p. 434, were dispelled by the announcement by the Chairman of the Committee to the press that the raids and arrests resulted from "racial agitation" (R. 92). But perhaps the most striking evidence of the real thrust of the legislation came shortly after the ominous prediction of Judge Wisdom in describing the overbreadth of the statutory language that "all of the organizations promoting increased Negro voting registration therefore fall within the definition of 'communist party' and any member could be prosecuted under the Louisiana Anti-Subversion Law" (R. 90, 91). Only two months later the Louisiana Joint Committee issued a report concluding that the Southern Christian Leadership Conference under the Chairmanship of Dr. Martin Luther King and the Student Non-Violent Coordinating Committee were "substantially under the control of the Communist Party through the influence of the Southern Conference Educational Fund and the Communists who manage it."¹⁶

In *Cramp*, *Button* and *Baggett*, this Court emphasized the unconstitutional vagueness of the statutory definitions involved by posing a series of hypothetical questions illustrating the overreach of the legislation. Here questions indicating the possible coverage of the penal provisions cannot be characterized by the State as "absurd," see *Cramp*, "speculative," see *Button*, or "fanciful," see *Baggett*. With deadly seriousness the state governmental agency most intimately preoccupied with the enforcement of these laws has already proposed that two of the most

¹⁵ *State v. Jenkins*, 236 La. 300, 107 So. 2d 648 (1958). See Point II, *infra*.

¹⁶ Report No. 5, April 13, 1964, Joint Legislative Committee on Un-American Activities, State of Louisiana, "Activities of the Southern Conference Educational Fund, Inc."—Part 2 at p. 126.

active organizations in the nation dedicated to the obtaining of equality and civil rights for Negro citizens in the states of the south through peaceful and non-violent measures, are proscribed organizations within the meaning of the Louisiana statutes and are accordingly subject to all of the penalties and proscriptions of that law.

More than this, with an equal seriousness this state legislative agency would subject the many thousands of members, adherents, supporters and sympathizers, of these two civil rights organizations in the State of Louisiana to all of the harsh penal provisions of the Statute. The questions have ceased to be hypothetical. Every one of the thousands of followers of Dr. King, every one of the many young students who have supported the Student Non-Violent Coordinating Committee, in truth every active adherent of equal constitutional rights for Negro citizens in Louisiana, stand presently threatened with penal enforcement of the statute. The vice of unconstitutional vagueness has never been more urgently illustrated. The Louisiana application of the Florida, Virginia and Washington formula, cf. *Cramp*, *Button* and *Baggett*, is simple and direct. An unduly vague and sweepingly broad legislative proscription of "communist" and "subversive" activities is created. Cf. *Baggett*. Racial integration and equal civil rights, concepts powerful state agencies "violently oppose" are affixed with a "communist label", cf. *Cramp*, and are identified as aims and objectives supported or desired by "communists" or the "Communist Conspiracy". Cf. *Baggett*. The thrust of the statute is then "selectively enforced" against the "militant Negro civil rights movement [which] has engendered the intense resentment and opposition of the politically dominant white community." Cf. *Button*. It is becoming increasingly clear that the only barrier existing to the wholesale utilization of this formula in Louisiana is the Constitution of the United States.

(b) The definition of "Communist Front Organization" in Section 359, subsection (3).

1. The definition of "Communist Front Organization" in Section 359, subsection (3), is an additional variation upon the basic statutory scheme rejected in *Baggett*.^{16a} It is the operative provision upon which the registration requirements of Section 360 and the penal provisions of Section 364(7) depend.¹⁷ Moreover, it is inextricably bound into the definitions of "subversive organization", Sec. 359(5), "Foreign Subversive Organization" Sec. 359(6) and "subversive person" Sec. 359(8). This is apparent because both the statutory preambles Section 358 and Section 390, make it amply clear that "communist organizations" are by legislative presumption organizations which, in the words of Subsections 5, 6 and 8,

"advocate, abet, advise or teach activities intended to overthrow, destroy or to assist in the overthrow or destruction of the State of Louisiana, * * * by revolution, force, violence, or other unlawful means, * * * or which seeks by unconstitutional or illegal means to overthrow or destroy the government of the State of Louisiana * * * and to establish in place thereof any form of government not responsible to the people of the State of Louisiana under the Constitution of

^{16a} "Section 359, subsection (3) 'Communist Front Organization' shall, for the purpose of this act include any communist action organization, communist front organization, communist infiltrated organization or communist controlled organization and the fact that an organization has been officially cited or identified by the Attorney General of the United States, the Subversive Activities Control Board of the United States or any Committee or Subcommittee of the United States Congress as a communist organization, a communist action organization, a communist front organization a communist infiltrated organization or has been in any other way officially cited or identified by any of these aforementioned authorities as a communist controlled organization, shall be considered presumptive evidence of the factual status of any such organization."

¹⁷ We discuss independently the constitutional invalidity of the registration provision at Point I, 3, *infra*.

the State of Louisiana." See Section 359(5), definition of "subversive organization". Cf. *Baggett*, *supra*, at pp. 362-3.

The definition of "communist front organization" is therefore a thread running through the entire statute and decisive to its operation. If the statutory definitions of "subversive organization", "foreign subversive organization" and "subversive persons" are "lacking in terms susceptible of objective measurement" and "failed to inform as to what the State commanded or forbade", cf. *Baggett* and *Cramp*, *supra*, what can be said about a statutory definition which invokes regulatory and punitive responses upon such concepts as "communist front", "communist infiltrated", "communist controlled" organizations without further legislative criteria.¹⁸

Furthermore, it is obvious that the definition of "communist party" as "any organization which in any manner advocates or acts to further the success of the program of world domination of the international communist conspiracy", subsection (2), must be read into subsection (3). An organization which falls within the proscription of subsection (2) *a fortiori* falls within subsection (3). The constitutional infirmities of the definition in subsection (2), cf. *Baggett*, *Cramp* and discussion *supra* merely intensifies the incredibly broad and dragnet character of the definitions in subsection (3).^{18a}

¹⁸ Compare the specific legislative criteria set forth in the Communist Control Act of 1954. Title 50 U. S. C. Sections 782, 844. Even with those detailed legislative guides this Court is presently considering the constitutionality in a federal statute of such sweeping definitions. See *American Committee for the Protection of the Foreign Born v. SACB*, cert. granted 377 U. S. 915.

^{18a} The provisions of R. S. 364 (4) (5) and (6) which make it a felony to "assist in the formation or participate in the management or contribute to the support of any subversive organization or foreign subversive organization" or to "destroy any books, records or files

But once again, unlike in *Button*, *Cramp* or *Baggett*, we do not have to test the breadth of these definitions by speculative questions. The Louisiana Joint Legislative Committee has already solemnly found that the entire "civil rights movement has been grossly and solidly infiltrated by the Communist Party". Report No. 5, April 13, 1964, at page 125. Clearly then the statutory sanctions applicable to "communist infiltrated" organizations via subsection (3) according to the state agency entrusted by the Legislature of Louisiana with supervision over the "operation, effect, administration [and] enforcement"¹⁹ of these statutes are applicable to what the Legislative Committee broadly terms the "civil rights movement". Report No. 5, *supra* at page 125.

We do not have to linger on the frightening implications of this blunt and frank expression of legislative intention. The Joint Legislative Committee has already demonstrated its power to force raids and prosecutions under the statute R. 92. If the vague and sweeping provisions of this law stand unchallenged no organization, indeed no person seeking equal civil rights for Negro citizens in the State of Louisiana, will be safe from harassment and criminal prosecution under this statute.

2. Perhaps recognizing the impossible vagueness of such concepts as "communist front", "communist infiltrated", or "communist controlled", the legislature at-

or secrete any funds in this state of a subversive organization or a foreign subversive organization" or "become or * * * remain a member of a subversive organization or a foreign subversive organization" must fall under *Baggett*. The vice of unconstitutional vagueness created by the statutory definitions condemned in *Baggett* is compounded here by such phrases as "assist in the formation", "participate in the management" or "contribute to the support."

¹⁹ See Louisiana House Concurrent Resolution Vol. 13, Regular Session 1960.

tempted to assist in what might otherwise be an evidentiary nightmare by providing a built-in statutory presumption as to the "factual status of any such organization". Thus, subsection (3) of Section 359 provides that "the fact that an organization has been officially cited or identified by the Attorney General of the United States, the Subversive Activities Control Board of the United States, or any Committee or Subcommittee of the United States Congress as a communist organization, a communist action organization, a communist front organization, a communist infiltrated organization, or has been in any other way officially cited or identified by any of these aforementioned authorities as a communist controlled organization, shall be considered presumptive evidence of the factual status of any such organization." Section 359, subsection (3). But this legislative presumption is itself grossly violative of the due process clause of the Fourteenth Amendment.

With the exception of the Subversive Activities Control Board all the citations or identifications upon which the presumption rests are ex-parte, unilateral actions arrived at without judicial or quasi-judicial proceedings or the opportunity for judicial review. But this Court has held that the imposition of any sanctions whatsoever, civil or criminal, based upon such methods of designating alleged subversive organizations is violative of the Due Process clause. *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123. This inclusion in the Louisiana statutes of a form of designation of proscribed organizations which has already been held violative of due process renders the statutes themselves violative of due process.

The Washington statute which was before the Court in *Baggett* originally contained a provision similar in character to the method of designation provided for in subsection (3). The statute relied in part for its designation of "subversive organizations" upon listings by the Attorney General of the United States. The validity of this

method of designation under the Due Process Clause never reached this Court because in an earlier stage of the litigation the Washington State Supreme Court itself struck down the provisions as violation of due process. *Nostrand v. Balmer*, 335 P. 2d 10 (S. Ct. Wash.).

The Louisiana method of designation even more flagrantly violates the requirement of the process. Unlike the Washington provision, the Louisiana statute would utilize citations or identifications as to the character of organizations by committees or sub-committees of Congress as "presumptive evidence" of the status of organizations under the statute. Sec. 359(3). This Court has frequently had the occasion of commenting upon the absence of substantial judicial safeguards or limitations in the proceedings before Congressional Committees or Sub-committees which have resulted in the public characterization of organizations as "subversive" or "communist controlled". See for example *Watkins v. United States*, 354 U. S. 178. Regardless of any differences within the Court as to legislative authority to engage in such public characterizations, cf. *Watkins v. United States*, *supra*, with *Barenblatt v. United States*, 360 U. S. 109, there can be little doubt that Louisiana's efforts to affix criminal sanctions upon such ex-parte Congressional conclusions violates the mandate of the Due Process Clause. *Joint Anti-Fascist Refugee Committee v. McGrath*, *supra*. Cf. *Nostrand v. Balmer*, *supra*.²⁹

²⁹ This method of designation of proscribed organizations also would seem to be violative of due process in that it constitutes, in part, an attempt to adopt citizens, identifications or rulings of federal agencies which may be made in the future. State statutes which attempt to adopt further federal actions, whether they be rules, citations, regulations or statutes, have been consistently held to be void as violative of due process. *State v. Urquhart*, 50 Wash. 2d 131, 310 Pac. 2d 261. See also, *Brock v. Superior Court*, 9 Cal. 2d 291, 71-P. 2d 209, 114 A. L. R. 127; *Florida Industrial Commission v. State ex rel. Orange State Oil Co.*, 155 Fla. 772, 21 So. 2d 599;

There is an equally serious objection under the Due Process Clause to this method of designation of proscribed organizations. In *Louisiana ex rel. Gremillion v. NAACP* (E. D. La. New Orleans Div. 1960), 181 Fed. Supp. 37, aff'd *Louisiana v. NAACP*, 371 U. S. 415, a three-judge District Court struck down Sec. 386 of the statute presently before the Court holding that "The statute would require the impossible. It is clearly unconstitutional." (Opinion by Judge Wisdom).

This Court affirmed the decision of the three-judge District Court in words completely appropriate to Subsection (3):

"The District Court commented that the statute 'would require the impossible' of the Louisiana residents or workers. 181 F. Supp. at page 40. We have received no serious reply to that criticism. Such a requirement in a law compounds the vices present in statutes struck down on account of vagueness. Cf. *Winters v. People of State of New York*, 333 U. S. 507, 68 S. Ct. 665, 92 L. Ed. 840. It is not consonant with due process to require a person to swear to a fact that he cannot be expected to know (cf. *Tot v. United States*, 319 U. S. 463, 63 S. Ct. 1241, 87 L. Ed. 1519) or alternatively to refrain from a wholly lawful activity."

Sec. 359(3) equally "would require the impossible." To avoid serious penal sanctions any citizen of the state would be required to keep himself informed at every moment as to any citation or identification made in any

Florida Industrial Commission v. Peninsular Life Insurance Co., 152 Fla. 55, 10 So. 2d 793; *State v. Webber*, 125 Me. 319, 133 A. 738; *State v. Gauthier*, 121 Me. 522, 118 A. 380, 26 A. L. R. 652; *State v. Intoxicating Liquors*, 121 Me. 438, 117 A. 588; *In re Opinion of the Justices*, 239 Mass. 606, 133 N. E. 453; *Dearborn Independent, Inc. v. City of Dearborn*, 331 Mich. 447, 49 N. W. 2d 370; *Smithberger v. Banning*, 129 Neb. 651, 262 N. W. 492, 100 A. L. R. 686; *Holgate Bros. Co. v. Bashore*, 45 Dauph. Co. Pa. 274; *Ex parte Lasswell*, 1 Cal. App. 2d 183, 36 P. 2d 678.

way by any of the agencies listed in the sections. Before joining any organizations he would be required to conduct an extraordinary and exhaustive investigation to discover whether over an indefinite period of years the organization had ever been so identified in any way by any of these agencies. This "would require the impossible". See *Louisiana v. NAACP, supra*.

The opinion of this Court affirming the three-judge District Court in *Louisiana v. NAACP, supra*, wholly disposes of the method of designation in Subsection (3). This provision not only "would require the impossible of Louisiana residents or workers * * *" but "compounds the vices present in statutes struck down on account of vagueness * * *". *Louisiana v. NAACP, supra*. And as in respect to Section 386 invalidated in the former case, it is equally "not consonant with due process" to permit a person to be imprisoned as a result of the existence of facts "that he cannot be expected to know". *Louisiana v. NAACP, supra*.

3. Subsection (3) further violates the Due Process Clause in that it creates unconstitutional presumptions of guilt. The statute provides that the fact that an organization has been cited or identified in any way by certain specified federal officers or agencies "shall be considered presumptive evidence of the factual status of any such organization." This presumption is then applicable in the penal provisions of the statutes, Sec. 364 and 390.2. Such a presumption is clearly unconstitutional. The legislature may not declare an individual guilty or presumptively guilty of a crime. *McFarland v. American Sugar Refining Co.*, 241 U. S. 79. The policy underlying this principle was recently restated fully by the Fifth Circuit in *Barrett v. United States*, 322 F. 2d 292.

"The unquestioned policy of the criminal law has placed upon the prosecution the burden of proving beyond a reasonable doubt all facts neces-

sary to the defendant's guilt. The Government starts with both the burden of proof and the burden of persuasion. A statute which shifts either one or both of these burdens to an accused is difficult to reconcile with our hard-earned heritage of fair trials. If the shift compels an accused to come forward with an exculpatory explanation—or else, before the prosecution has made a substantial showing of probability of guilt, the presumption collides with the most fundamental canon of criminal law—the presumed innocence of the defendant.”

See also *Mann v. United States*, 319 F. 2d 292 (C. A. 5, 1963).

This presumption shifts the burden of proof to a defendant in the delicate arena of First Amendment liberties under conditions in which he would virtually be required in order to defend himself to do “the impossible”. Cf. *Louisiana v. NAACP*, *supra*. A potential defendant charged with membership in an organization designated as “subversive” by a Congressional Committee would be required to come forward with affirmative evidence negating a characterization based upon evidence he might well be totally ignorant of, or evidence which might have been rejected out of hand as unreliable if the state had been required to meet its normal burden of proof. As this Court recently pointed out “the power to create presumptions is not a means of escape from constitutional limitations”. *New York Times Co. v. Sullivan*, 376 U. S. 254, 84 S. Ct. 710, 728. See also, *Bailey v. Alabama*, 219 U. S. 219.

The presumption created by subsection (3) collides with the most fundamental canons of our criminal law in the area of our most protected liberties. It permits a form

of harassment of citizens wholly in violation of the most elementary traditions of American justice.²¹

4. The method of designation of organizations in subsection (3) further offends against the Due Process Clause in that it constitutes a separation of the power of a state legislature to characterize conduct as a criminal, from the responsibility of that body, to control the use of that power. *Sweezy v. State of New Hampshire*, 354 U. S. 234. In *Sweezy* this Court held that while the concept of separation of power embodied in the Federal Constitution may not be mandatory upon State governments, nevertheless where a violation of this concept "causes a deprivation of the constitutional rights of individuals" this would result in a "denial of due process of law". *Sweezy* at p. 255.

The holding of this Court in *Sweezy* is directly applicable here. The Louisiana legislature has improperly delegated its legislative duty to the Attorney General of the United States, the Subversive Activities Control Board and the committees and subcommittees of Congress. This improper delegation of legislative power results in a serious deprivation of the constitutional rights of individuals, cf. *Louisiana v. NAACP*, *supra*, and constitutes a denial of due process of law. *Sweezy v. New Hampshire*, *supra*.

²¹ The "rational connection test" of the validity of a statutory presumption, see *Mobile, J. & K. C. R. R. Co. v. Turnipseed*, 219 U. S. 35, cannot save these presumptions of guilt. As we have pointed out, this method of designation of proscribed organizations is violative of the due process clause in several serious respects. See *Joint Anti-Fascist Refugee Committee v. McGrath*, *supra*; *Nostrand v. Balmer*, *supra*; *Louisiana v. NAACP*, *supra*. A method of designation which is itself violative of due process could hardly be considered a "reasonable" method of ascertaining a fact. Compare *Barrett v. United States*, *supra*. Moreover, it can scarcely be argued, in light of *Joint Anti-Fascist Refugee Committee*, *supra*, that an ex-parte designation that an organization is subversive is necessarily a reasonable proof of the fact. The inferences would seem to be rather to the contrary. See Gellhorn, Report on a Report of the House Committee on Un-American Activities, 60 Harv. L. R. 1193 (1947).

**(c) The definition of "communist propaganda"
in Section 390.1.**

We have centered the Court's attention upon the invalidity of the essential operative provisions of the statute, the definitions of "subversive organization," "foreign subversive organization" and "subversive persons" already held unconstitutionally vague in *Baggett*, and Louisiana's primary additions to the statutory scheme, the definitions of "Communist Party" and "Communist-Front Organization." One other principal definition remains upon which serious penal sanctions rests. The definition of "communist propaganda" in Sec. 390.1, which controls the penal provision of Sec. 390.2, is as this Court commented in *Cramp* "extraordinary." The prohibited (propaganda) is "any oral, visual, graphic, written, pictorial or other communication" "issued, prepared, printed, procured, distributed or disseminated by, among others, 'any communist organization' which 'communication or material' " is

"(a) reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any way influence a recipient or any section of the public with reference to the political or public interests, policies or relations of a government of a foreign country or a foreign political party, or promote in the United States or the state of Louisiana, any attitude or state of mind that tends to undermine the determination of any citizen of the United States or of any of the various states to uphold and defend the Constitution of the United States or the constitutions of the respective states, or tends to create or encourage disrespect for duly constituted legal authority, either federal or state, or

"(b) which advocates, advises, instigates or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in the United States the state of

Louisiana or any other American republic, or the overthrow of any government or political subdivision of the United States, the state of Louisiana or any other American republic by any means involving the use of force or violence."

The statute then provides that delivering, distributing, disseminating or storing such literature in Louisiana shall be a felony punishable by a maximum of six years imprisonment and \$10,000 fine, Secs. 390.3, 390.7.

A definition of "propaganda" which sweeps into its scope any "communication or material . . . which advocates, instigates or promotes any racial, social, political or religious disorder . . ." or which "tends to create or encourage disrespect for duly constituted legal authority, either federal or state," obviously violates every principle this Court has ever enunciated to enforce the First and Fourteenth Amendments. Rarely has a statute ever been brought before this Court so obviously void for vagueness and over-breadth. A reading of these definitions suggests the conclusion that their enactors never seriously contemplated that these proscriptions would ever survive serious constitutional scrutiny.

This definition of forbidden literature would prohibit on its face the simplest written expression of opinion which might be deemed to be contrary to the interests of the established authorities of the state of Louisiana. It seems unnecessary to ask the question as to whether we have returned to the point in this country where citizens may be imprisoned for publishing statements which "tend to create or encourage disrespect for duly constituted legal authority, either federal or state." Only last Term the Court had the occasion to remind the Nation that the attacks of Jefferson and Madison upon the Sedition Act of 1798 "has carried the day in the course of history." *New York Times v. Sullivan*, *supra* at p. 723. Criminal prosecution for the dissemination of literature, which in

the opinion of constituted authorities, may "promote any racial, social, political or religious disorder" is so patently a violation of the First and Fourteenth Amendments as to require scant attention in this Court. The definitions of "communist propaganda" and the penal provisions of Sections 390.3 and 390.7, are clearly unconstitutional under the fundamental principles recently reiterated by the Court in *New York Times v. Sullivan*, *supra*. See also *Aptheker v. Secretary of State*, 84 S. Ct. 1659; *Henry v. City of Rock Hill*, 376 U. S. 776, 84 S. Ct. 1042.

3. The registration provisions in Section 360 violate on their face the First, Fifth and Fourteenth Amendments.

1. The registration provisions set forth in Section 360 incorporate both the definition of "communist" contained in 359(1) and "communist front organization" contained in 359(3). Any person falling within the scope of either definition is required by virtue of Section 360 to register with the Department of Public Safety of the state on or before the fifth consecutive day such a person remains in the state. Registration must include such information as purpose of presence in Louisiana, sources of income, organizations registrant is a member of, and "any other information requested by the department of public safety which is reasonably relevant" to the purpose of the statute. The registration records are open to inspection by any law enforcement officer of the state or the United States and at the "discretion of the Department of Public Safety" the records may be opened to the general public. Sect. 360(A)(B)(C). Failure to register is punishable by a maximum of ten years imprisonment and a fine of \$10,000. Sect. 364(7); 365.

All of these inhibiting regulations are imposed upon any person falling within the definition of "communist" in 359(1) or any person who is a member of an organization falling within the definition of "communist front organization" in 359(3). We have already pointed out

that 359(1) and 359(3) are unconstitutionally vague under the rule of *Baggett v. Bullitt*; *Cramp v. Board of Public Instruction*; *Lanzetta v. New Jersey* and *Connolly v. General Construction Co.*, all *supra*. See subsections 2(a) and (b) *supra*. A regulatory scheme based upon such unconstitutionally vague standards falls as violative of the due process clause. *Baggett v. Bullitt*; *Cramp v. Board of Public Instruction*; *Connolly v. General Construction Co.*, all *supra*. See also *U. S. v. Cardiff*, 344 U. S. 174; *Champlin Refining Co. v. Corporation Commission of Oklahoma*, 286 U. S. 210.²²

And as the Court pointed out in *Baggett* and in *Cramp*, "the vice of unconstitutional vagueness is further aggravated where, as here, the statute in question operates to inhibit the exercise of individual freedoms affirmatively protected by the Constitution" 368 U. S. 778, 287. The registration provisions of Section 360, like the oath requirements in *Baggett* and *Cramp* are "indefinite statutes whose terms, even narrowly construed, abut upon sensitive areas of First Amendment Freedoms". *Baggett* at p. 372.

And as in *Baggett*, the "uncertain meanings" of the categories of persons required to register will mean that all citizens will "steer far wider of the unlawful zone", *Speiser v. Randall*, 357 U. S. 513, 526, "than if the boundaries of the forbidden areas were clearly marked". *Baggett* at p. 372.

Louisiana citizens involved in any forms of political expression will as the Court has warned in *Baggett*, avoid the

²² The registration provisions in Sect. 360 also fall as violative of due process under the rule of *Lambert v. California*, 355 U. S. 225. In *Lambert* conviction under a five day registration period requirement for convicted persons was reversed where the defendant had no knowledge of any duty to register and there was no probability of any such knowledge. Here, the unduly vague requirements create the same circumstances. No one can be sure with any certainty of any requirement to register under the Statute and there is little probability of any such knowledge.

inhibitions of registration on the one hand, or criminal prosecution for failure to register on the other hand "only by restricting their conduct to that which is unquestionably safe" 377 U. S. 360 at p. 372. And as Mr. Justice White concluded for the Court in *Baggett*, "Free speech may not be so inhibited" 377 U. S. 360 at p. 372. *Smith v. California*, 361 U. S. 147; *Stromberg v. California*, 283 U. S. 359; See also *Herndon v. Lowry*, 301 U. S. 242.

2. The registration provisions of Section 360 and the penal sanctions attached for failure to register are further violations of due process under the recent decision of the Court in *Aptheker v. Secretary of State*, 84 S. Ct. 1659. Section 360 contains the same vice as Section 6 of the Communist Control Act invalidated by the Court in *Aptheker*. Section 360 applies whether or not a person "actually knows or believes that he is a "communist" within the broad meaning of the Louisiana definitions. Section 360 does not even mention any requirement of knowledge in respect to designated "communists". The registration provision in the Louisiana statute similar to the statute before the Court in *Aptheker* "sweeps within its prohibition both knowing and unknowing members". This is particularly dangerous where the definition of "communist" has such a broad sweep as Section 359(1) and (2). See subsection 2(a) *supra*. In *Aptheker* the Court this last Term, restated the holding of *Wieman v. Updegraff*, 344 U. S. 183 that the due process guarantee of the Constitution is violated where a State legislates against individuals "solely on the basis of organizational memberships without regard to their knowledge concerning the organizations." As the Court concluded in *Wieman*, "Indiscriminate classification of innocent with knowing activity must fall as an assertion of innocent with knowing activity must fall as an assertion or arbitrary power" 344 U. S. at 191.

Furthermore, the blanket registration requirement in Section 360 with its onerous conditions and penal sanctions like the *Aptheker* statute "renders irrelevant the member's

degree of activity in the organization and his commitment to its purpose". *Aptheker* at p. 1666. In this connection Mr. Justice Goldberg restated the conclusion of the Court in *Schneiderman v. U. S.*, 320 U. S. 118, 136, that "Men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles." Cf. *Schware v. Board of Examiners*, 353 U. S. 232 at 246. This comment is particularly appropriate in assessing the validity of the requirement of registration for all members of organizations falling within the broad sweep of the statutory definition of "communist front organizations".²³

3. The registration requirements in Section 360 violate the 14th Amendment in that they interfere with and impede the fundamental right of American citizens to travel freely within the borders of the United States, from state to state without restriction and limitation. The right to move freely from state to state is a privilege and immunity of national citizenship. *Edwards v. California*, 314 U. S. 160, (concurrence at 177 and 182). The right to travel within the borders of this country as the right to travel abroad, is a part of the "liberty" of which the citizen cannot be deprived without due process of law. *Aptheker v. Secretary of State*, *supra*; *Kent v. Dulles*, 357 U. S. 116. And as the Court held in *Kent* "Travel abroad, like travel within the country, may be as close to the heart of an individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic to our values." *Kent*, at p. 125, 6.

²³ The Court in *Aptheker* points out that criminal penalties under the so-called "membership clause" in the Smith Act were limited in *Scales v. United States*, 367 U. S. 203, to only "active" members who have a "guilty knowledge and intent". It is significant that the Government in *Aptheker* conceded that "neither the words nor history of Section 6 [of the Communist Control Act] suggests limiting its application to "active members". Footnote 9 at p. 1666. Similarly here "neither the words nor history" of the section suggest the slightest intention on the part of the legislature to limit the scope of the registration requirement to "active" members.

If freedom of movement, the right to move freely from state to state is a privilege and immunity of national citizenship, *Edwards v. California, supra*, Louisiana may not restrict or impede that privilege and immunity by requiring that, after five days of physical residence in that State, citizens of other states must either submit to the rigours and exposures of the registration procedure if their otherwise lawful political activities fall within the broad sweep of the statute's proscriptive definitions, chance criminal prosecution, or leave the state before the five days expire. Nor may Louisiana argue that citizens of other states may remain in Louisiana beyond the five-day period if they abandon their membership in the proscribed organization. This very argument was advanced and rejected in *Aptheker*. As the Court there stated, "Since freedom of association is itself guaranteed in the First Amendment, restrictions imposed on the right to travel cannot be dismissed by asserting that the right to travel could be fully exercised if the individual would first yield up his membership in a given association." *Aptheker*, p. 1664.

Mr. Justice Douglas, concurring in *Aptheker* has pointed out that "freedom of movement is kin to the right of assembly and to the right of association", and that "this freedom of movement is the very essence of our free society, setting us apart". *Aptheker* at page 1671. Louisiana's registration provisions limiting free access into that state to a five-day period is a serious restraint upon this essential freedom of American citizens. Representatives of civil rights organizations, lawyers who are asked to represent otherwise undefended victims of racial discrimination, teachers who volunteer to teach at voter registration schools, all will be deterred from entering and remaining in the State if they fear they may be associated with any of the hundreds of lawful organizations which may fall within the broad proscriptions of the Louisiana Statutes. Louisiana may not thus limit and restrict a privilege and

immunity of American citizens so intimately related to the exercise of fundamental liberties protected by the First and Fourteenth Amendments.²⁴

4. The registration requirement in Section 360, as enforced by Section 364(7), violates on its face the privilege against self-incrimination. *Blau v. United States*, 340 U. S. 159; *Quinn v. United States*, 349 U. S. 155. In *Malloy v. Hogan*, 378 U. S. 1, this Court has now held that the privilege against self-incrimination contained in the Fifth Amendment is safe-guarded against state action by the Fourteenth Amendment. Louisiana's registration requirements are a frankly open violation of the constitutional privilege. See *People v. McCormick*, 228 P. 2d 349, 102 C. A. 2d 954. Louisiana has made it a felony to "become or remain a member of a subversive organization or a foreign subversive organization". Section 364(6). Louisiana simultaneously requires members of such organizations to register the fact of membership.²⁵ It is impossible to conceive of a more open disregard of the constitutional privilege. Cf. *Communist Party v. U. S.*, 331 F. 2d 807, cert. denied 377 U. S. 968. The requirement of registration of membership in the statutorily proscribed organizations likewise violates the constitutional privilege in that the fact of registration may tend to incriminate the registrant under Federal Laws.²⁶ Under the recent decision of the Court

²⁴ The registration provisions also are an undue burden upon interstate commerce in violation of the Commerce Clause of the Constitution, in that many persons falling within the restrictive provisions may be entering the State and intending to remain there in the course of the conduct of interstate business. Cf. *Edwards v. California*, *supra*.

²⁵ We have described previously the interrelationship between the statutory definition of "communist", "communist party", "communist front organization", and "subversive organization".

²⁶ Cf. the Smith Act and the Internal Security Act.

in *Murphy v. Waterfront Commission*, 378 U. S. 52, a state may not compel a citizen to give evidence which might be used against him under the laws of another jurisdiction.

Louisiana's registration provision is a naked effort to force citizens to incriminate themselves both under state and federal laws. The statute was written as if the privilege, "One of the great landmarks in man's struggle to make himself civilized", *Ullman v. U. S.*, 350 U. S. 427, 426, did not exist.²⁷

4. The Louisiana legislation is not narrowly drawn to meet legitimate Governmental purposes.

The Louisiana statute further violates the constant insistence of this Court that in the area of the First Amendment even though governmental design be legitimate and substantial, that purpose may not be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. Only this June the Court has emphatically restated this "well established" principle for testing whether restrictions imposed are consistent with the liberty guaranteed in the Constitution; "It is a familiar and basic principle, recently reaffirmed in *NAACP v. Alabama*, 377 U. S. 288, 84 S. Ct. 1302, 1314; that a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." *Aptheker v. Secretary of State*, *supra*, at pages 1664-5. See *NAACP v. Button*, 371 U. S. 415; *Louisiana ex rel. Gremillion v. NAACP*, 366 U. S. 293; *Talley v. California*, 362 U. S. 60; *Schwartz v. Board of Examiners*, 353 U. S. 232; *Martin*

²⁷ Unlike *Communist Party v. SACB*, *supra*, this question is not raised here prematurely. Appellees have threatened to enforce this statute and in particular the criminal provisions against the appellants. Appellants have been indicted for failure to register. Accordingly, the impact of the privilege against self-incrimination upon the requirement to register is properly before the Court.

v. *City of Struthers*, 319 U. S. 141; *Cantwell v. Connecticut*, 310 U. S. 296; *Schneider v. State*, 308 U. S. 147.

In recently applying this principle the Court in *NAACP v. Alabama*, *supra*, utilized the criteria set forth in *Shelton v. Tucker*, 364 U. S. 479, at 488: "The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose." See also *Sherbert v. Verner*, 374 U. S. 398.

The legislative purpose underlying the statute purports to be a concern with the security of the state, an assertion of the state's inherent right to "self preservation". See West-Ellis opinion, R. 66.²⁸ But more than ample legislation exists on the statute books of Louisiana and the federal government to meet any actual threat or danger to the security of that state. See, for example, *Louisiana Laws*. R. S. Title 14, Sec. 113 (treason); R. S. 14, Sec. 114 (misprison of treason); R. S. 14, Sec. 115 (criminal anarchy); R. S. 53, Sec. 201 (sabotage). The full panoply of federal laws in this area are well known. See for example the Smith Act of 1940 as amended in 1948, 18 U. S. C. 2385; the Internal Security Act of 1950, 50 U. S. C. 761 *et seq.*; the Communist Control Act of 1954, 50 U. S. C. 841.

The right of Louisiana to "self-preservation" is of course fully protected on her own statute books and through national legislation. The simple fact of the matter is that the Louisiana statute is not narrowly drawn to meet a specific legitimate governmental problem. And, as this Court said in *Shelton v. Tucker*, *supra*, "the unlimited and indiscriminate sweep of the statute now before us brings it within the ban of our prior cases."

The "unlimited and indiscriminate sweep" of this statute is not accidental. Both the context within which it was

²⁸ We discuss later the impact of state legislation in this area intruding upon existing federal legislation based upon Congress' unquestioned power under the Constitution to safeguard the Nation's security. Cf. *Pennsylvania v. Nelson*, 350 U. S. 497.

enacted and its threatened enforcement, cf. *Button v. NAACP*, *supra*, both against these appellants and the entire "civil rights movement", see Joint Legislative Committee Report No. 5, *supra*, vividly illustrates that the true thrust of the statute is directed against the expression of views and the exercise of constitutional rights distasteful to the constituted authorities of the State of Louisiana. The candidly expressed intention of the Joint Legislative Committee is to use this statute to curb the thousands upon thousands of Negro and white citizens of Louisiana who increasingly seek to exercise the fundamental liberties of the First Amendment to obtain in that State the enforcement of the equal rights guaranteed in the Fourteenth and Fifteenth Amendments. But criminal sanctions and sweeping repression are not the methods America has chosen to provide the framework for the interplay of social and political concepts.

In this sense the majority below was perhaps accurate in saying that in this case "the very vitals of our constitutional system of Government are on the line." West-Ellis opinion, R. 74. The stern requirement that statutes trenching upon the area of First Amendment liberties must be narrowly and precisely drawn reflects the fundamental philosophy of American constitutional democracy. The words of Mr. Justice Brandeis, concurring in *Whitney v. California*, 274 U. S. 357, 374, we have recently been reminded, *New York Times v. Sullivan*, *supra*, at 270, sum up the high importance of this concept:

"Those who won our independence⁶ believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without

free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government."

This guiding philosophy of government is not limited to the advocacy of concepts of social change comfortable to established authority in a state. As this Court recently reminded the nation, "the constitutional safeguard, we have said, 'was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' *Roth v. U. S.*, 354 U. S. 476, 484". *New York Times v. Sullivan*, *supra*, at p. 269. See also *Henry v. City of Rock Hill*, 376 U. S. 776; *Edwards v. South Carolina*, 372 U. S. 229; *NAACP v. Button*, *supra*; *De Jonge v. Oregon*, 299 U. S. 353; *Stromberg v. California*, 283 U. S. 359.

If the authorities of the State of Louisiana disagree with the activities of these appellants and the many thousands of Negro and white citizens of the State who seek enforcement of the Fourteenth and Fifteenth Amendments their recourse does not lie in enforcement of penal statutes broadly abridging First Amendment liberties. As this Court recently found it necessary to restate: "Under our system of government counter-argument and education are the weapons available to expose these matters, not abridgement of the right of free speech and assembly." *Wood v. Georgia*, 370 U. S. 375.

5. The Louisiana Statute violates the Freedom of Association guaranteed by the Due Process Clause of the Fourteenth Amendment.

Enactment and attempted enforcement of this statute by Louisiana is merely another in the many recent attempts to utilize the legislative power of certain of the Southern

states to hamper, restrict and outlaw associations of Negro and white citizens joined together for the purpose of seeking implementation of the Equal Protection Clause and enforcement of the voting guarantees of the Fifteenth Amendment. In each of these cases this Court has repeatedly resisted these efforts to interfere with the constitutionally protected right of freedom of association. *NAACP v. Alabama*, 377 U. S. 288; *Gibson v. Florida Legislative Investigating Committee*, 372 U. S. 539; *Louisiana v. NAACP*, 366 U. S. 293; *Shelton v. Tucker*, 364 U. S. 479; *Bates v. City of Little Rock*, 361 U. S. 516; *NAACP v. Alabama*, 357 U. S. 449.

Time and again this Court has emphatically stated that these attempts run counter to fundamental Constitutional rights. In *NAACP v. Alabama*, 357 U. S. 449, the Court grounded its rejection of Alabama's attempts to utilize a state statute to harass a civil rights organization upon the necessity of protecting the right of freedom of association.

"It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. See *Gitlow v. New York*, 268 U. S. 652, 666, 45 S. Ct. 625, 629, 69 L. Ed. 1138; *Palko v. Connecticut*, 302 U. S. 319, 324, 58 S. Ct. 149, 151, 82 L. Ed. 288; *Cantwell v. Connecticut*, 310 U. S. 296, 303, 60 S. Ct. 900, 84 L. Ed. 1213; *Staub v. City of Baxley*, 355 U. S. 313, 321, 78 S. Ct. 277, 281, 2 L. Ed. 2d 302. Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." *id.* at 460-1.

See *Aptheker v. Secretary of State*, *supra*, at p. 1664; *Brotherhood of Railway Trainmen v. Virginia*, 377 U. S.

1, 84 S. Ct. 1113, 1115; *NAACP v. Alabama*, 377 U. S. 288, 307-8.

In *Gibson v. Florida*, *supra*, at 543-4 once again the Court rejected an effort by the State of Florida to harass and intimidate an association seeking implementation of the Equal Protection Clause:

"This Court has repeatedly held that rights of association are within the ambit of the constitutional protections afforded by the First and Fourteenth Amendments. *N.A.A.C.P. v. Alabama*, 357 U. S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488; *Bates v. Little Rock*, 361 U. S. 516, 80 S. Ct. 412, 4 L. Ed. 2d 480; *Shelton v. Tucker*, 364 U. S. 479, 8 S. Ct. 247, 5 L. Ed. 2d 231; *N.A.A.C.P. v. Button*, 371 U. S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405. And it is equally clear that the guarantee encompasses protection of privacy of association in organization such as that of which the petitioner is president; indeed, in both the *Bates* and *Alabama* cases, *supra*, this Court held *N.A.A.C.P.* membership lists of the very type here in question to be beyond the States' power of discovery in the circumstances there presented."

And in *Louisiana v. NAACP*, *supra*, in striking down a provision of the statute now under review this Court restated its determination to protect the constitutional right to freedom of association from Southern legislative assault:

"We deal with a constitutional right, since freedom of association is included in the bundle of First Amendment rights made applicable to the States by the Due Process Clause of the Fourteenth Amendment. *Id.*, 357 U. S. at page 460, 78 S. Ct. at page 1171; *Bates v. City of Little Rock*, 361 U. S. 516, 523, 80 S. Ct. 412, 416, 4 L. Ed. 2d 480. And where it is shown, as it was in *N.A.A.C.P. v. State of Alabama*, *supra*, 357 U. S. 462-463, 78 S. Ct. 1171-1172, that disclosure of membership lists results in reprisals against and hostility to the members, disclosure is not required. And see *Bates v. City of*

Little Rock, supra, 361 U. S. 523-524, 80 S. Ct. 416-417." *Louisiana v. N.A.A.C.P.* at 297.

The present statute in its entirety is a naked attempt to restrict and inhibit freedom of association. The statute on its face patently violates the principles established by this Court protecting the right of association. Any attempted enforcement, for example, of Section 360, the "registration requirement" or 364(7), the penal section for failing to register, would run afoul of these uniform decisions.

The forcible disclosure of membership in the Southern Conference Educational Fund, for example, or the National Association for the Advancement of Colored People, or the Congress of Racial Equality or the Student Non-Violent Coordinating Committee, all of which might well be required by Section 360 of the statute, would patently violate the guiding principles established by this Court to protect freedom of association. Sections 385 and 386 of the Louisiana statute presently before the Court have already been held to be patently unconstitutional as violative of the right of association. See *Louisiana v. NAACP, supra*. The entire statutory scheme now here for review is just as clearly an effort to "stifle, penalize or curb the exercise of First Amendment rights", *Louisiana v. NAACP, supra*, at p. 297 and an effort to curtail, if not eliminate, the constitutional right of freedom of association.

The Louisiana statute, and in particular those criminal provisions which the state now seeks to enforce against these appellants and other members of civil rights organizations are simply efforts to require the disclosure of membership in organizations which will result in "reprisals against and hostility to the members." *NAACP v. Alabama, supra*, at p. 463; *Bates v. City of Little Rock, supra*, at p. 524. Cloaking the demand for exposure of membership in civil rights organizations under the guise of combatting subversion cannot escape the constitutional pro-

hibition: As this Court said in *Bates v. Little Rock*, "freedoms such as these are protected not only against heavy-handed frontal attack but also from being stifled by more subtle governmental interference." The utilization of "anti-subversive" legislation to force the disclosure of membership in civil rights organizations may appear more sophisticated than the naked demand for names, but as this Court pointed out once before to the State of Louisiana, "measures no matter how sophisticated, cannot be employed in purpose or in effect to curb the exercise of First Amendment rights." *Louisiana v. NAACP*, *supra*, at p. 297.

* * *

The total effect of the incredibly broad dragnet character of the Louisiana statutory provisions, the built-in presumptions of guilt, the sweeping proscriptions against membership in organizations and the possession of books and literature, is to erect a powerfully effective deterrent against the exercise of the most elementary rights of press, speech, assembly and free association. Cf. *Baggett v. Bullitt*, *supra*; *Aptheker v. Secretary of State*, *supra*; *New York Times v. Sullivan*, *supra*; *NAACP v. Button*, *supra*; *Herndon v. Lowry*, *supra*; *Thornhill v. Alabama*, 310 U. S. 88.

Statutory prior restraints on freedom of expression which have been repudiated here in the past have normally been directed against a particular form of First Amendment expression. Cf. *Bantam Books v. Sullivan*, 372 U. S. 58; *Smith v. California*, 361 U. S. 147; *Near v. Minnesota*, 283 U. S. 697; *Lowell v. Griffin*, 303 U. S. 444; *Cantwell v. Conn.*, 310 U. S. 296. This statute places a gigantic prior restraint upon the exercise of all First Amendment liberties. It has no place in our constitutional scheme. "The safeguarding of these rights to the end that men may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion, is essential to free government" *Thornhill v. Alabama*, *supra*, at 95.

POINT II

The Louisiana anti-subversive laws have been superseded by federal legislation.

The Louisiana "Subversive Activities and Control Law", R. S. Title 14, § 358 *et seq.* and "Communist Propaganda Control Act", R. S. Title 14 § 390.1 *et seq.* have been totally superseded by a full panoply of federal legislation. Principal among the federal statutes superseding these state enactments are the Smith Act of 1940, as amended in 1948, 18 U. S. C. 2385, the Internal Security Act of 1950, 50 U. S. C. 761 *et seq.*, and the Communist Control Act of 1954, 50 U. S. C. 841. Under the decision of this Court in *Commonwealth of Pennsylvania v. Nelson*, 350 U. S. 497, 76 S. Ct. 477, the Louisiana statutes here under consideration have been clearly superseded and may not be enforced under the impact of the Supremacy Clause.

Although the majority of the three-judge court refused to meet the constitutional challenge to the statutes, they discuss supersession at some length concluding that the validity of the state laws can be sustained under this Court's opinion in *Uphaus v. Wyman*, 360 U. S. 72, (R. 71. Judge Wisdom, dissenting, finds that *Uphaus* does not overrule *Nelson* and concludes that the Louisiana statutes are clearly superseded. R. 95-101.

Nelson established three tests to indicate Congressional intention to preempt a field of legislation. Under each of these criteria the conclusion is inescapable that the Louisiana anti-subversion laws have been superseded: These criteria are as follows:-

(1) The scheme of federal regulation is so pervasive that it can reasonably be inferred that Congress left no room for the states to legislate;

(2) The state statutes deal exclusively with an area in which the national interest is so dominant that

the federal system must be assumed to preclude enforcement of state laws on the same subject; and

(3) Enforcement of the state laws present a serious danger of conflict with the administration of the federal program. *Pennsylvania v. Nelson, supra*, at pp. 502, 504, 505.

There can be little debate that under *Nelson* the Louisiana statutes are superseded and suspended. However, the majority of the lower court reads *Uphaus* as virtually overruling *Nelson*. But every consideration which led this Court in 1956 to enunciate the guiding principles of *Nelson* are equally present today. The broad sweep which the majority below would give to *Uphaus* not only disregards the serious factors which led the Court in *Nelson* to enforce the Supremacy Clause in striking down the Pennsylvania statute, but, as Judge Wisdom points out in his dissenting opinion, "offers great prospects for disguising unlawful state action against federally protected rights" R. 96.

At a moment when certain states are increasingly turning to sedition prosecutions as a means "for disguising unlawful state action against federally protected rights", R. 96, the principles which were enunciated in *Nelson* assume new vitality. They may not be undermined by a reading of *Uphaus* which would sanction state prosecutive action in areas clearly preempted by the national government.²⁹

(a) The applicability of the *Nelson* tests to the present legislation.

The considerations which led the Court in *Nelson* to conclude that the Congress had there intended to preempt the field apply, we suggest, with even greater force to the impact of the Internal Security Act and the Communist

²⁹ We discuss later the impact of this Court's decision in *Baggett v. Bullitt, supra*, upon *Uphaus*.

Control Act upon the Louisiana legislation here involved. Recognizing that there is "no one crystal clear distinctly marked formula" for determining when a federal statute has preemptly occupied a field, the Court tested supersession by several criteria. *Nelson*, *supra* at page 502. Each of these "tests of supersession" are directly applicable to the Louisiana statutes now before the Court.

1. As in *Nelson*, the scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it. *Commonwealth v. Nelson*, *supra*, at page 502; *Rice v. Santa Fe Elevator Corporation*, 331 U. S. 218, 230. In *Nelson* the Court examined carefully the complex of federal anti-subversive legislation and found that:

"* * * the conclusion is inescapable that Congress has intended to occupy the field of sedition. Taken as a whole, they evince a congressional plan which makes it reasonable to determine that no room has been left for the States to supplement it."

Commonwealth v. Nelson, *supra*, at page 504. See, also, *Garner v. Teamsters Union, AFL*, 346 U. S. 485; *Rice v. Santa Fe Elevator Corp.*, *supra*; *Cloverleaf v. Patterson*, 315 U. S. 148; *Pennsylvania R. R. v. Public Safety Commission*, 250 U. S. 566; *Bethlehem Steel Corp. v. New York Labor Board*, 330 U. S. 767.³⁰

³⁰ The Court's analysis of the existing federal legislation in *Nelson* is directly applicable to the present situation.

"The Congress determined in 1940 that it was necessary for it to re-enter the field of anti-subversive legislation, which had been abandoned by it in 1921. In that year, it enacted the Smith Act which proscribes advocacy of the overthrow of any government—federal, state or local—by force and violence and organization of and knowing membership in a group which so advocates. Conspiracy to commit any of these acts is punishable under the general criminal conspiracy provisions in 18 U.S.C. § 371, 18 U.S.C.A. § 371. The Internal Security Act of 1950

The conclusions in 1954 of the *Nelson* Court in respect to congressional occupation of the field are, if anything, even more persuasive today. It has become increasingly clear that when to the Smith Act is added the regulatory and prohibitory scheme of the Internal Security Act and the Communist Control Act, a total occupation of the field has occurred. The Internal Security Act is an elaborate registration statute demanding the services of a special administrative body and its constitutionality on its face has been upheld in *Communist Party v. Subversive Activities Control Board*, *supra*, by a divided Court.

is aimed more directly at Communist organizations. It distinguishes between 'Communist-action organizations' and 'Communist-front organizations,' requiring such organizations to register and to file annual reports with the Attorney-General giving complete details as to their officers and funds. Members of Communist-action organizations who have not been registered by their organization must register as individuals. Failure to register in accordance with the requirements of Sections 786-787 is punishable by a fine of not more than \$10,000 for an offending organization and by a fine of not more than \$10,000 or imprisonment for not more than five years or both for an individual offender—each day of failure to register constituting a separate offense. And the Act imposes certain sanctions upon both 'action' and 'front' organizations and their members. The Communist Control Act of 1954 declares 'that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States' and that 'its role as the agency of a hostile foreign power renders its existence a clear, present and continuing danger to the security of the United State.' It also contains a legislative finding that the Communist Party is a "'Communist-action' organization" within the meaning of the Internal Security Act of 1950 and provides that 'knowing' members of the Communist Party are 'subject to all the provisions and penalties' of that Act. It furthermore sets up a new classification of 'Communist-infiltrated organizations' and provides for the imposition of sanctions against them."

Commonwealth v. Nelson, *supra*, at pages 503-504.

The Communist Control Act of 1954 extends the regulatory and prohibitory operation of the Internal Security Act, and in *Scales v. United States*, 367 U. S. 203, a divided Court upheld the constitutionality of the membership provisions of the Smith Act. Prosecutions are presently pending against certain individuals for failing to register as members of the Communist Party under the Internal Security Act, and this Court has laid down a detailed series of guide posts for prosecutions under the membership clause of the Smith Act. *Scales v. United States*, *supra*.

Ten years after *Nelson*, the conclusion remains inescapable that the Congressional scheme of regulation is so pervasive as to make reasonable the inference that Congress has left no room for the states to supplement it. *Commonwealth v. Nelson*, *supra*, at p. 504.

2, The second test invoked in *Nelson* was that the statutes involved touched a field in which the federal interest is so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject. *Commonwealth v. Nelson*, at page 504; *Rice v. Santa Fe Elevator Corporation*, at page 238; *Hines v. Davidowitz*, 312 U. S. 52.³¹

³¹ Applying this test the Court in *Nelson* described the dominant federal interest there invoked in the following way:

"Congress has devised an all-embracing program for resistance to the various forms of totalitarian aggression. Our external defenses have been strengthened, and a plan to protect against internal subversion has been made by it. It has appropriated vast sums, not only for our own protection, but also to strengthen freedom throughout the world. It has charged the Federal Bureau of Investigation and the Central Intelligence Agency with responsibility for intelligence concerning Communist seditious activities against our Government, and has denominated such activities as part of a world conspiracy. It accordingly proscribed sedition against all government in the nation—nation-

As in *Nelson*, the federal statutes primarily involved here—the Internal Security Act and the Communist Control Act—represent Congressional action in an area of paramount national concern: *Hines v. Davidowitz*, *supra*; *Rice v. Santa Fe Elevator Corp.*, *supra*. In these federal statutes, Congress has specifically based its legislation upon powers constitutionally delegated to the national government. The federal statutes rest, in the first instance, upon the express duties laid upon the federal Congress to provide for the common defense,³² the exclusive responsibility of the national government in the general field of foreign affairs,³³ the obligation imposed by the Constitution upon the national government to guarantee to every state in the Union a republican form of government,³⁴ and the fundamental duty and obligation of the federal authorities to preserve the sovereignty of the United States as an independent nation.³⁵ Thus in enacting the Internal Security Act Congress specifically stated:

“The Communist organization in the United States * * * and the nature and control of the world communist movement * * * make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of

al, state and local. Congress declared that these steps were taken to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government * * *

³² United States Constitution, Article I, § 8, Clause 1.

³³ See *Hines v. Davidowitz*, *supra*; *Henderson v. Mayor of New York*, 92 U. S. 259; *People v. Compagnie Generale Transatlantique*, 107 U. S. 59; the *Chinese Exclusion Cases*, 130 U. S. 581.

³⁴ United States Constitution, Article IV, § 4.

³⁵ Cf. *Dennis v. United States*, 341 U. S. 494.

such world wide conspiracy and designed to prevent it from accomplishing its purposes in the United States." 50 U. S. C. 781 [emphasis added].

Here, in far more express language than in the Smith Act, Congress has based its legislation upon powers delegated by the Constitution to the federal government in areas of the most paramount national concern.

Where Congress has exercised such powers there is a presumption of Congressional intention to preempt the area. *Hines v. Davidowitz, supra*; *Rice v. Santa Fe Elevator Corp., supra*. In such situations it is not even necessary to demonstrate an actual conflict with or repugnancy to the federal legislation. *Hines v. Davidowitz, supra*; *Rice v. Santa Fe Elevator Corp., supra*.

In the statute presently before the Court Louisiana does not seek to camouflage its intention to intrude into fields of paramount national concern. It states its intention quite frankly. In both 14:358 and 14:390, the two statutory preambles, the necessity for providing for the common defense, the regulation of affairs between the United States and foreign nations, the preservation of the sovereignty of the United States, the guarantee to the states of a republican form of government, are all invoked as sources of authority for the state legislation.

But the states of the Union are not separate sovereign powers. The needs of the common defense, the regulation of foreign affairs, the duty to preserve the sovereignty of the nation and to guarantee to states the republican form of government are areas of paramount, if not exclusive, national concern. Cf. *Hines v. Davidowitz, supra*.

If the preambles to the state legislation leave any doubt whatsoever as to their validity under the Supremacy Clause the scheme of the statute reveals the state's total preoccupation with the problems and area already preempted by federal legislation. *Hines v. Davidowitz, supra*, is par-

ticularly instructive in this respect. In *Hines* this Court affirmed an injunction issued by a three-judge district court restraining the enforcement of an alien registration act adopted by Pennsylvania. The Court in an opinion by Mr. Justice Black, examined the state statute in light of the later enacted Federal Alien Registration Act, 8 U. S. C. 451 *et seq.*

As in *Hines*, Louisiana, like Pennsylvania, is attempting to intrude into the "general field" of foreign affairs and national defense, areas in which "the supremacy of the national power" is more than apparent. These are areas "so intimately blended and entwined with responsibilities of the national government that where it acts, and the state also acts on the same subject, 'the act of Congress, or the treaty, is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it.'" *Hines, supra*, at page 66, restating the opinion of Court in *Gibbons v. Ogden*, 9 Wheat. 1, 211. Where Congress has acted in fields of such unquestioned national concern the presumption is overwhelming that Congress has preempted the area of legislation and the enforcement of state laws on the same subject is precluded. *Commonwealth v. Nelson*; *Rice v. Santa Fe Elevator Corp.*; *Hines v. Davidowitz*, *all supra*.

3. The third test applied by the Court in *Nelson* was whether the enforcement of the state laws presented "a serious danger of conflict with the administration of the federal program." The importance of the test, central to the constitutional inquiry was stressed in *Hines v. Davidowitz, supra*. The Court there pointed out that "our primary function is to determine whether under the circumstances of this particular case Pennsylvania's law stood as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress." 312 U. S. at page 67. In *Nelson* the Court points out in some detail that the purpose of the overall program of congressional federal

enactments in this field is to attempt to guarantee "uniform enforcement" of the overall federal program. The Court quotes extensively from federal officials, including the President of the United States and the Director of the Federal Bureau of Investigation. *Commonwealth v. Nelson*, at pages 506, 507, 508, 509. Based upon this firmly expressed national policy the Court concluded that the penal enforcement of state Acts "would conflict with the operation of the federal plan".³⁶

³⁶ The discussion of the Court in *Nelson* on this point is especially appropriate here:

" * * * enforcement of state sedition acts represents a serious danger of conflict with the administration of the Federal program. Since 1939, in order to avoid a hampering of uniform enforcement of its program by sporadic local prosecutions, the Federal government has urged local authorities not to intervene in such matters, but to turn over to the federal authorities immediately and unevaluated all information concerning subversive activities."

[Quoting a public statement from President Roosevelt]

"This task [handling espionage-subversion] must be conducted in a comprehensive and effective manner on a national basis, and all information must be carefully sifted out and correlated in order to avoid confusion and irresponsibility."

[Quoting J. Edgar Hoover]

" * * * meeting the spy, the saboteur and the subverter is a problem that must be handled on a nation-wide basis. An isolated incident in the middle-west may be of little significance, but when fitted into a national pattern of similar incidents, it may lead to an important revelation of subversive activity. * * * It is unfortunate that in a few States efforts have been made by individuals not fully acquainted with the far-flung ramifications of this problem to interject superstructures of agencies between local law enforcement and the FBI."

Cf. this discussion of the Court in *Nelson* to the statements of the Louisiana Joint Committee at the time of the raids in October to the effect that they refused to coordinate their activity under this statute with the Federal Bureau of Investigation because "We know that if we told the FBI about this raid, they would have to tell Bobby Kennedy. We cannot trust him and we expect him to tell his friend, Martin Luther King." R. 26, 27 [Appellants Offer of Proof in Court below].

The conclusion of the Court in 1954 applies with even greater cogency today. Here, as in *Hines*, where the Federal Government, in the exercise of its supreme authority in this field, has enacted a complete scheme of legislation . . . states cannot . . . conflict or interfere with, curtail or compliment, the federal law, or enforce additional or auxiliary regulations." Cf. *Nielsen v. Johnson*, 279 U. S. 47; *International Shoe Co. v. Pinkus*, 278 U. S. 261.

In the present situation Congress has enacted a "complete scheme" of legislation and proscription which in broad outline the state has attempted to duplicate. The federal legislation establishes a system of registration of allegedly subversive organizations. The state likewise establishes a system of registration of allegedly subversive organizations. The federal government proscribes in great detail membership in certain communist or subversive organizations.³⁷

The state statute on its part attempts to proscribe precisely the same conduct. The main punitive thrust of the state statute is punishment for membership in generally the same organizations proscribed by the federal statutes. Perhaps the sharpest indication of the open invasion of the

³⁷ See, for example, the provisions of the Communist Control Act providing "whoever knowingly * * * becomes a member * * * of any organization having for its purpose and objectives the establishment, control, conduct, seizure, or overthrow of the Government of the United States or the Government of any state or political subdivision thereof, by the use of force or violence * * * shall be subject to all the provisions and penalties of the Internal Security Act of 1950, as amended, as a member of a 'Communist-action' organization," 50 U. S. C. 843, as well as the provisions of the Internal Security Act penalizing membership in proscribed organizations, 50 U. S. C. 783, 50 U. S. C. 794(G), and the provisions of the Smith Act, 18 U. S. C. 2385 proscribing membership in any "society, group or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government (the Government of the United States or the government of any state, territory, district) by force or violence."

federally preempted area is the reliance by the state upon organs of federal authority in determining which organizations the state seeks to proscribe. Thus in its principal definition of proscribed organizations, 14:359 and 14:390.1, the state relies for "presumptive evidence of the factual status" of any proscribed organization upon the fact that such organizations have been "officially cited or identified" by "the Attorney General of the United States, or any committee or sub-committee of the United States Congress".

Nothing could more bluntly indicate the intention of the state to enact laws designed to intrude in fields primarily within federal competence. The attempt of the state to create punitive sanctions for designations by federal agencies obviously "conflicts" and "interferes" with the purpose of Congress. Recognizing the strict requirements of the Due Process Clause, Congress has refrained from imposing criminal sanctions upon merely *ex-parte* designations of organizations as "subversive" or "Communist". Instead it has set up a carefully constructed machinery in the Internal Security Act for the adjudication of this question together with a full opportunity for judicial review. See 50 U. S. C. 792, 793. Cf. *Joint Anti-Fascist Committee v. McGrath*, 341 U. S. 123.

Here, however, with total disregard for both the intent of Congress and the mandate of the Constitution, Louisiana has attempted to impose criminal sanctions upon designations by Congressional Committees which the Congress, itself, has declined to impose. Nothing could indicate more sharply the necessity for the enforcement of the Supremacy Clause in this area. These state statutes are expressly designed to enforce designations made by federal agencies based upon federal laws in areas of federal supremacy in a manner contrary to federal statutes.

In the Internal Security Act and the Communist Control Act, Congress has attempted to devise an overall

scheme of regulation which, in the words of *Nelson*, "purports to protect fundamental rights by appropriate definitions, standards of proof and orderly procedures in keeping with the avowed congressional purpose 'to protect freedom from those who would destroy it, without infringing upon the freedom of all our people.'" *Nelson*, at page 508.

Where federal laws contain deliberate safeguards for the protection of individual liberty and these congressional safeguards would be nullified if the state were ~~allowed to~~ proceed, Congress will not be presumed to have intended such a result. *Hines v. Davidowitz*, *supra*, at page 74. As Mr. Justice Black pointed out in *Hines*, this is of particular importance where the "legislation deals with the rights, liberties and personal freedoms of human beings, and is in an entirely different category from state tax statutes, or state pure food laws, regulating the labels on cans." 312 U. S., at page 68. The Internal Security Act, upheld by a sharply divided Court, see *Communist Party v. Subversive Activities Control Board*, 367 U. S. 1, provides for a careful system of adjudication, including full opportunities for judicial review prior to the institution of criminal proceedings based upon any designation of an organization as "Communist". It is perfectly clear from the majority opinion in *Communist Party v. Subversive Activities Control Board*, *supra*, that if the federal statute had not expressed a congressional concern to comply with the requirements of the Due Process Clause the law would not have survived the constitutional attack.

On the other hand, the Louisiana statute ignores any safeguards for the protection of individual liberty which the federal laws have attempted to erect, thus obstructing the clearly expressed congressional purpose. See Point I, *supra*.

The Louisiana statute would permit wholesale criminal prosecutions of individuals for wholly peaceful associations

and expressions of social and political opinions based upon *ex parte* non-judicial characterizations of organizations by Congressional Committees. In the present appeals the prosecutions rest upon years old, unilateral charges by the House and Senate Committees.³⁸

Even where the membership charge would be based upon designations by the Federal Subversive Activities Control Board, the criminal penalties and enforcement procedures are in clear conflict with the Federal statute.

In this respect the state law clearly runs contrary to the congressional purpose by imposing a series of additional penalties for offenses for which Congress has already provided a single set of penalties. *Jerome v. United States*, 313 U. S. 101, 105; *Houston v. Moore*, 18 U. S. (5 Wheat.) 1, 25. Both 14:358 *et seq.* and 14:390.1 *et seq.* provide penalties up to ten years of imprisonment and fines of \$10,000. for acts which have already been penalized by the federal legislation. As Mr. Justice Washington in *Houston v. Moore* stated, this is "something very much like oppression, if not worse".

But perhaps the most striking illustration of the manner in which enforcement of the Louisiana statute would obstruct and interfere with national policy is evidenced by the threatened prosecutions of appellants. Americans may freely associate with one another with the objective of striving to achieve the equality guaranteed to Negro and white alike by the Fourteenth Amendment. *NAACP v. Alabama*; *NAACP v. Button*; *Bates v. Little Rock*; *Louisiana ex rel. NAACP v. Gremlion*, and cases cited *supra*. But as we have discussed previously the immediate history of the attempted enforcement of these laws leaves little

³⁸ The indictment of appellants rests upon a Report of the House Committee on Un-American Activities, June 16, 1947, a Report of the Senate Internal Security Subcommittee, March 18-20, 1954, and a Report of the House Committee on Un-American Activities, February 16, 1959.

doubt as to the purpose of the state authorities in attempting to circumvent this national policy. See Point I, *supra*.

The long history of the opposition of state authorities in Louisiana to the implementation of the enforcement of the Equal Protection Clause is well known to the federal courts. See *Bush v. Orleans Parish School Board*, 188 F. Supp. 196, and companion cases. The threatened use of this Louisiana statute against individuals and organizations seeking to enforce the constitutional guarantees of equality and the elimination of racial segregation runs contrary to the highest expressions of national policy and concern.

This appeal presents in the most aggravated form the problems which the Court in *Nelson* saw as flowing from the enforcement of state laws which conflict with the operation of a federal plan. Here the enforcement of the state statute would not only sanction a disregard for the deliberate safeguards for the protection of individual liberty contained in the federal statutes, but would permit the use of these statutes to frustrate the enforcement of a primary national objective—the full implementation of the Equal Protection Clause of the Fourteenth Amendment. The highest policy considerations call for the enforcement of the Supremacy Clause and the suspension of this state statute.

(b) The Louisiana Statute is superseded by federal legislation under the "same conduct" test of *Uphaus*.

Under any of the tests enunciated in *Nelson* the Louisiana statutes here under attack must fall as superseded by federal legislation.³⁹ But even when the *Nelson* opinion is posed in its most confined terms the test formulated

³⁹ As with any other landmark decision of the Court there has been considerable discussion both in the cases and the commentaries as to the sweep of the decision. See, for example, *Uphaus v. Wyman*, 360 U. S. 72; 79 S. Ct. 1040; Cramton, *Supreme Court and State Power to Deal with Subversion*, 43 Minn. L. R., 1025.

strikes down the Louisiana statutes as superseded. In *Uphaus v. Wyman*, 360 U. S. 72, Mr. Justice Clark for the then majority of the Court restated the holding in *Nelson* in the following manner:

"In *Nelson* itself we said that the 'precise holding of the Court * * * is that the Smith Act * * * supersedes the enforceability of the Pennsylvania Sedition Act which proscribes the *same conduct*.'" (Italics supplied by Mr. Justice Clark.) *id.* at 76.

Applying this formulation of the breadth of *Nelson* the Louisiana statutes must fall as superseded since in the most deliberate manner the state legislature has attempted to proscribe the "same conduct" as Congress did in the Smith Act, the Internal Security Act and the Communist Control Act.

An examination of Title 14 R. S. 358 *et seq.*, the Subversive Activities and Communist Control Law, and 14 R. S. 390.1 *et seq.*, the Communist Propaganda Control Law reveals beyond any dispute that these state laws were designed to "proscribe the same conduct" as the overall complex of federal legislation. This is no accident. The Louisiana statutes were expressly enacted to attempt to meet the same problems and to legislate in the exact area covered by the federal statutes.

A reading of the preambles to the state legislation is revealing. 14:358 openly proclaims that the purpose of the legislation is to seek to meet problems created by the "world Communist movement." Thus, the preamble declares, "there exists a world Communist movement, directed by the Union of Soviet Socialist Republics and its satellites which has as its objective world control." After describing in some detail the conduct of this "world Communist movement" which the state seeks to proscribe, the legislature concludes that "the world Communist movement constitutes a clear and present danger to the citizens

of the State of Louisiana. The public good and the general welfare of the citizens of this state require the immediate enactment of this measure."

But this is precisely the "conduct" which Congress has proscribed in the federal legislation. The preamble to the Internal Security Act, Title 50, Sec. 781, in almost the identical language utilized by the Louisiana legislature states that the purpose of the federal legislature is likewise to meet the problems of "conduct" engendered by the "world Communist movement." This "conduct" is defined again in almost precisely the same terms as the state statute. The Louisiana legislature has not hesitated to concede that it is addressing itself to the exact area of problems and conduct regulated and proscribed by the federal statutes. The preambles to both of the Louisiana statutes make it perfectly clear that the stated purpose of the state statutes is an effort to control and proscribe the conduct and effect of the "world Communist movement."

The "world Communist movement" is, in the words of the Louisiana legislators, the clear and present danger which "requires the immediate enactment of this measure". Louisiana is not here concerned with subversion which is directed solely to the state. Cf. *Uphaus v. Wyman, supra*. Quite to the contrary, the legislature is here concerned only with "conduct" of a national and international character. It is perfectly clear that the legislature is not attempting to deal with purely local problems conceivably within its competence, but rather with the national and international phenomena which are the express and stated concern of the federal legislation.

The Louisiana legislature leaves nothing to the imagination. Thus in 14:358 the legislature explains the state's concern with the conduct proscribed in the state statute by pointing out that,

"Since the State of Louisiana is the location of many of the nation's most vital military establish-

ments, and since it is a producer of many of the most essential products for national defense, the State of Louisiana is a most probable target for those who seek by force and violence to overthrow constitutional government, and is in immediate danger of Communist espionage, infiltration and sabotage."

Thus the state legislature concedes that its concern is with threats to the national interest and national security, with problems relating to the national defense and, indeed, to the area of the relationships between nations. It is the presence in Louisiana of the nation's "most vital military establishments" that creates, in the opinion of the legislature, the possibility of "conduct" it seeks to proscribe. It is the fact that there are located in this area producers of "many of the most essential products for national defense" which creates the statutory concern. But these are precisely the areas of Congressional regulation and proscription in the superseding federal legislation.

This is not a situation in which it is necessary to infer from the objective conduct proscribed an intention to intrude upon areas clearly and obviously preempted by the federal government. Cf. *Hines v. Davidowitz, supra*. Here, we are told by the state legislature itself, that its intention is avowedly to intrude into the federal area. Here the state legislature does not camouflage its design as a concern with "purely local state problems". Cf. *Uphaus*. Here the state legislature has not attempted to avoid references to national concerns. Louisiana openly concedes that it is legislating in areas of highest federal concern, and that it is attempting to proscribe conduct already regulated and proscribed in the greatest detail by existing federal statutes. Probably there has never been a situation in which state intention to intrude into an area preempted to the federal government has been more openly manifested. It could not be clearer that under the tests enunciated in both *Nelson* and *Uphaus* the Louisiana statute is patently violative of the Supremacy Clause and may not be enforced.

But the majority of the District Court would read *Uphaus* as if it has overruled *Nelson*. The majority below sees *Uphaus* as a license to engage in semantic magic. Conduct specifically covered by federal legislation is removed from the preempted area by the affixation of a label bearing the inscription "this is directed at the state alone". But constitutional prohibitions may not be avoided by convenient labels. *New York Times v. Sullivan*; *Aptheker v. Secretary of State*, *supra*.

Uphaus is not an open invitation to disregard *Nelson*. The opinion of the majority of the Court in *Uphaus* is careful to reaffirm and restate the "precise holding" of *Nelson*. *Uphaus* at page 76. And as we have discussed here the "same conduct" test of *Uphaus* clearly strikes down state legislation and prosecutive activities directed at "conduct" already proscribed by federal legislation.

Uphaus as Judge Wisdom indicates in his dissenting opinion below is restricted by its own terms to conduct solely directed against a state itself. Thus it is conceivable that "riots, malicious mischief, * * * or a conspiracy to dynamite the State house", R. 96, unrelated to conduct already proscribed by federal legislation, may under *Uphaus* be the basis for state legislation. That *Uphaus* must be strictly confined to such local behavior totally unrelated to activities which fall within the wide arena of conduct covered by the federal regulatory scheme is further evidenced by the serious undermining of whatever authority the case may have had by the decision of this Court this June in *Baggett v. Bullitt*, *supra*.

The decision of the Court in *Baggett* has in effect overruled *Uphaus*. In *Uphaus* the statutory authority for the legislative inquiries made by the State Attorney-General, the subject of the litigation before the Court, was the New Hampshire Subversive Activities Act, N. H. Rev. Stat. Ann. (c. 588, Sect. 1-16), 1955. The majority predicated its assumption that the legislative inquiries were

relevant upon the existence of the Subversive Activities Act. But the New Hampshire Act is almost word for word the Washington Statute struck down as unconstitutionally vague by the Court this June in *Baggett*.⁴⁰ Whatever impact *Uphaus* may have had upon the question of the reserved powers of a state to legislate or investigate in the area of "subversive" activities is now seriously undermined by the fact that the Court has held that state statutes of the New Hampshire type are void as unconstitutional.⁴¹ See *Baggett, supra*.

Any limitations *Uphaus* may have suggested upon the teachings of *Nelson* must now be viewed in light of the impact of *Baggett*⁴² upon the very basis for the *Uphaus* opinion. But beyond this it is increasingly clear that the fundamental policy evaluations underlying the conclusion of the Court in *Nelson* have been reinforced and vindicated in the decade following the decision.⁴²

⁴⁰ See Point I, *supra*.

⁴¹ It is of some interest that the dissenting Justices in *Uphaus*, Mr. Justice Brennan, joined by the Chief Justice, Mr. Justice Douglas and Mr. Justice Black, raise questions concerning the constitutionality of the New Hampshire statute in terms which presage the present majority opinion in *Baggett*.

"The Legislature had passed a broad and comprehensive statute, which included criminal sanctions. That statute was, to say the least, readily susceptible of many applications in which it might enter a constitutional danger zone. See *Yates v. United States*, 354 U. S. 298. * * * Therefore, indictment would be fraught with constitutional and evidentiary problems of an obvious and hardly subtle nature." *Uphaus* at p. 99.

⁴² See Louis H. Pollak, *The Supreme Court and the States* (Reflections on *Boynton v. Virginia*, 49 Cal. L. R. 15 (1961)):

"But the Court can also be right—as it was, to take a non-commerce case, when, in *Pennsylvania v. Nelson*, Chief Justice Warren sustained the Pennsylvania Supreme Court in barring the conviction, under Pennsylvania's anti-sedition laws, of one

- (c) The state courts have consistently applied the rule of *Nelson* as prohibiting state criminal prosecutions for sedition based upon charges of communist activity.

The present vitality of *Nelson* is further evidenced by the fact that in the years following the decision not a single state court criminal prosecution for alleged communist activity has been sustained. See, for example, *Commonwealth v. Gilbert*, 334 Mass. 71, 1956; *Braden v. Commonwealth*, 291 S. W. 2d 843 (Kentucky); *Commonwealth v. Hood*, 334 Mass. 76; *Commonwealth v. Dolsen*, 183 Pa. Sup. 339. These cases dealt with attempted enforcement of state sedition acts based upon charges that the defendants were engaged in communist activities or were members of communist organizations. Even where the charge was carefully couched in terms of sedition against the state itself, in applying the doctrines enunciated in *Nelson* the state courts uniformly pointed out that charges of communist activity of necessity involved conduct proscribed by the federal legislation. Thus, for example, the Supreme Court of Massachusetts, in *Commonwealth v. Gilbert*, *supra*, at 74-5 pointed out:

"Although all these things * * * are specified as pertaining to the overthrow of the government of this Commonwealth, it is evident that they are the familiar paraphernalia of communist agitation for the overthrow of government in general, and cannot be

accused of sedition against the United States. Putting aside the know-nothings who have read *Nelson* as aid and comfort to communism, the criticism of *Nelson* has mainly come from those who have confined their attention to the Court's inquiry into congressional 'purpose' in the Smith Act and related legislation. If *Nelson* is treated as an attempt to determine how best to serve the dominant national interest in a field in which Congress has not spoken with any clarity, the importance of *Nelson* becomes clear. And the fact that Congress has not yet 'overruled' the Court is some evidence that the Chief Justice and his colleagues of the *Nelson* majority did not go astray in their assessment of the national interest."

directed separately and exclusively against the government of this Commonwealth."

These cases all dealt with criminal prosecutions under state sedition laws, directly superseded by the federal Smith Act.⁴³ Following the passage of the federal Internal Security Act several states enacted so-called "little McCarran Acts", principally among them Alabama, Louisiana, Michigan and Texas. These statutes are attempts to cover the areas governed by the Internal Security Act of 1950 and the Communist Control Act of 1954. See Fund for the Republic, *Digest of the Public Record of Communism in the United States* (1955), 241-488.⁴⁴ The Supreme

⁴³ Some efforts have been made in Congress to secure legislation which would revive state sedition laws. (See, e.g., Hearings before the Internal Security Subcommittee of the Senate Committee on the Judiciary, 84th Cong. 2d Sess., on S. 3603 and S. 3617, May 11, 1956, entitled "Jurisdiction in Sedition Cases"; see also, Hearings before the Senate Judiciary Committee, 84th Cong. 2d Sess., on S. 373 and S. 3143, May 18, 1956, entitled "Federal-State Concurrent Jurisdiction"). None of these efforts have been successful. The failure of these congressional attempts reinforces the continued vitality of *Nelson*.

⁴⁴ State anti-subversive statutes vary widely. Alabama (Code of Alabama, Recompiled 1958, ch. 27A, 97(1)-97(8)) defines "Communists", "Communist Party" and "Communist fronts" in a manner substantially like Louisiana. Its registration statute is substantially identical with Louisiana's R. S. 14:360. See also Washington, (Wash. Rev. Code 9.81 *et seq.*, invalidated by *Baggett v. Bullitt*, *supra*). Other states requiring registration of persons or organizations are: Arkansas (Arkansas Statutes 1947 Ann. 41:4125); Mississippi (Miss. Code 1942 Ann. 4194-01 to 4194:10: registration upon request of Secretary of State of organizations and members which have been named by Congressional committees or other federal agencies, or of organizations which have one or more officers who are officers of organizations which have been so named; Montana (Rev. Code of Montana 1947, ch. 44, 4411-27); New Mexico (New Mexico Statutes 4-15-1 to 4-15-3: registration of members of Communist Party, organizations which support "Communist" doctrine, or advocate violent overthrow of the United States or New Mexico); South

Court of Michigan, in *Albertson v. Millard*, 345 Mich. 519, faced directly the impact of the preemption doctrine upon such state statutes and struck down the Michigan Act on

Carolina (Code of Laws of South Carolina 1962, 16-581-9); Wyoming (Wyoming Stat. 9-693-9). With the exception of Mississippi and New Mexico, the organizations required to register are all either defined as advocating violent overthrow of the Federal and state (or all state) governments or which have been determined by the state legislature to have that objective.

States outlawing organizations advocating violent overthrow of the Federal and state governments, and punishing membership in such organizations, are: Alabama (Code of Ala. Recom. 1958, title 14, § 20, ¶ 4); Alaska (Alaska Stat. 11.50.020); Arkansas (Ark. Stat. 1947 Ann. 41, 4125); Delaware (Del. Code Ann. 11, § 861); Florida (Fla. Stat. Ann. tit. 44, ch. 876.02-876.22-28: membership in or "association with" group which "promotes interests of" "communistic" organizations); Georgia (Ga. Code Ann. 26-902a); Indiana (Burns Ind. Stat. Ann. 10-5204: punishing membership in organizations advocating overthrow or engaging in "Un-American activities"); Kansas (Gen. Stat. of Kan. (Ann.) 21-306); Maryland (Ann. Code of Md. 85A, 1-3); Michigan (Mich. Stat. Ann. 28.813: membership in organization engaging in "subversion against the state"); Mississippi (Miss. Code 1942 Ann. 4194-01, *et seq.*); Montana (Rev. Code of Mon. 1947, ch. 44, 4411-27); New Hampshire (N. H. Rev. Stat. Ann. ch. 588); New Jersey (N. J. Stat. Ann. 2A, 148:14); New Mexico (N. M. Stat. 4-15-1 to 4-15-3 "Communitistic"); North Carolina (N. C. Gen. Stat. 14-11); Ohio (Ohio Rev. Code 2921.21, *et seq.*); Oklahoma (Okl. Stat. Ann. ch. 21, 1266.1 to 1266.11); Pennsylvania (Purdon's Rev. Penn. Stat. 18-3811); South Carolina (Code of Law of S. C. 1962, 16-581-9); Tennessee (Tenn. Code Ann. 39-4405); Wisconsin (Wis. Stat. Ann. 946.09); Wyoming (Wyo. Stat. 9-693-9); Virginia (Code of Va. 18.1-421: advocating overthrow by force, violence "or other unlawful means").

The following states, with statutes as cited above, have "subversive" person and organization definitions and provisions identical or substantially identical to those of Louisiana: Alabama, Florida, Georgia, Maryland, New Hampshire, Ohio and South Carolina.

the ground that it had been totally superseded by existing federal legislation.⁴⁵

The Supreme Court of Louisiana itself has applied *Nelson* to the 1954 version of the statute presently before the Court.

In *State v. Jenkins*, 236 La. 300, 107 So. 2d 648, (1958) the Louisiana Court held that state prosecutions for alleged communist activity have been superseded by existing federal law. In the *Jenkins* case the defendant was charged in a bill of information with violating R. S. 14: 366-380, an earlier version of the statute presently before this Court. The defendant was alleged to be a member of the Com-

⁴⁵ In describing the impact of the Michigan decision upon the Alabama, Louisiana and Texas statutes, a recent commentator has written:

"These statutes provide for registration of communist and subversive organizations, set out penalties for sabotage, and impose various disabilities upon registrants, such as exclusion from the ballot and from public office. Other states require registration but do not impose disabilities upon registrants. It is probable that most of the provisions of these statutes have been superseded by federal legislation. The registration statutes duplicate and enlarge the federal registration scheme. Nearly all of them differ from the federal scheme in one or more respects. Some are accompanied by provisions outlawing the Communist Party. Because of the probable conflict of provisions, there is a much clearer case for preemption with reference to these statutes than there is with respect to the sedition statutes invalidated by the *Nelson* case. *Hines v. Davidowitz*, in which the Federal Alien Registration Act of 1940 was held to supersede a Pennsylvania alien registration statute, provides a close analogy. Moreover, the breadth and thoroughness of the federal scheme make it easier to infer a preemptive intent on the part of Congress. It is not surprising that the Michigan Supreme Court in *Albertson v. Attorney General* held that Michigan's comprehensive communist control law had been superseded by the similar provisions of federal communist control measures."

Cramton, *Supreme Court and State Power to Deal with Subversion and Loyalty*, 43 Minn. L. R. 1025, 1034.

munist Party knowing it to be a foreign subversive organization as defined in § 366 of the statute. The prosecution argued that *Nelson* merely foreclosed acts of sedition against the United States alone. The Louisiana Court rejected the prosecution's position, carefully pointing out:

"This contention cannot be sustained. A reading of the majority opinion in the *Nelson* case leaves no doubt that the ruling covers the entire area of communist activity, since communism in any form, even though directed against a local government, necessarily violates the Smith Act. Thus, in the case at bar, the charge that the accused has been guilty of subversive activity, in that she was a member of the Communist Party, in its essence includes seditious acts against the government of the United States (even though such violation had not been specifically alleged), for our Communist Control Law (R. S. 14:358-365) like the Federal Communist Control Act, 50 U. S. C. § 841 et seq., contains legislative declarations of fact that the Communist Party is dedicated to the overthrow of all organized government."⁴⁶

The majority of the lower court takes the position that neither *Nelson* nor *Jenkins* governs the present Louisiana statute due to the intervening decision of this Court in *Uphaus*.⁴⁷ But as we have discussed previously even if

⁴⁶ In support of its conclusion the Louisiana Court specifically referred to and adopted the opinion of the Michigan Supreme Court in *Albertson*, *supra*, as well as the opinions of the Supreme Courts of Massachusetts and Kentucky in *Gilbert* and *Braden*, both *supra*.

"The conclusion we reach here, finds ample support in the views expressed by the highest courts of Massachusetts, Kentucky, and Michigan."

⁴⁷ The 1962 Act is an attempt to meet the decision of the Louisiana Court in *Jenkins*, *supra*. The 1962 Act is patently an effort to retain the entire substance of the 1952-54 legislation while eliminating the most overt expression of intrusion into the federal area. Thus the only substantive changes in the 1962 legislation

Uphaus retains any vitality after *Baggett* it concedes as superseded any state legislation which proscribes the "same conduct" as that covered by federal legislation. The Louisiana Court itself has acknowledged this limitation upon state legislative power. In *State v. Cade*, 244 La. 534, 135 So. 2d 382 (1963), in an opinion discussing the impact of *Uphaus*, the Louisiana court restated and reaffirmed its earlier holding in *Jenkins* that "any claim of reserved state power in prosecutions for Communist activity had been foreclosed by the *Nelson* decision." *Cade* at 541.⁴⁸

Perhaps more than any other case which has come before the Court, this appeal illustrates the importance of the doctrine of preemption to the preservation of the concept of a Federal Union. Louisiana has in the enactment of these laws and in their attempted enforcement acted essentially upon the assumption that it is an independent sovereignty. Expressing dissatisfaction with the policies underlying national federal legislation it candidly seeks to legislate in

[continued from page 77]

beyond widening the definitions of "Communist" organizations. Cf. 359 (1), (2) and (3) with 1952 Act, Sections 2-4, was the elimination of the words "government of the United States" wherever it appeared in the 1954 Statute. Cf. 350 (5), (6), (8), and 364 (1), (2) with 1954 Act, Section 1, paragraphs 2, 3 and 5 and Section 2 (a), (b). However an examination of the text of the statutes reveals that the 1962 Act continues to proscribe the precise conduct covered by the 1952 and 1954 statutes. Cf. *Jenkins, supra*; *Uphaus, supra*.

⁴⁸ In *Cade* the Louisiana court upheld an indictment for violation of the State Criminal Anarchy Law, R.S. 14:115. It distinguished its ruling in *Jenkins* on the ground that the defendant in *Cade* was not charged as in *Jenkins*, with a violation of the statutes now before the Court, R.S. 14:366 *et seq.* and R.S. 14:390.4 *et seq.* The defendant was not charged with "communist activities," and the prosecution and statute involved in *Cade* did not "necessarily" involve conduct proscribed by federal legislation. This is to be contrasted with *Jenkins* which deals with a statute directed to the problem of "communism in any form" and therefore "in its essence includes seditious acts against the United States." *Jenkins* at p. 649.

fields frankly within the national sphere and to enforce its laws in a manner fundamentally at odds with national policies and objectives. But the several states are not independent sovereigns and the Union is not merely a "compact of states" *Cooper v. Aaron*, 358 U. S. 1. State statutes which intrude upon areas of paramount national concern in a manner wholly inconsistent with the highest national objectives must fall as violative of the Supremacy Clause. Otherwise in the words of Chief Justice Marshall "the Constitution itself becomes a solemn mockery" *United States v. Peters*, 9 U. S. 115, 136.

POINT III

The District Court had the power and duty to entertain the complaint and enjoin the enforcement of the statute.

(a) The District Court had power to entertain the complaint.

The majority of the three-judge court dismissed the complaint for failure to state a cause of action for relief. It is not entirely clear upon what basis this rests. The majority seems to believe that under some unclearly defined doctrine of "states rights" Federal district courts do not have the power to entertain a cause of action seeking injunctive relief against the type of unconstitutional state statute here involved. As Circuit Judge Wisdom commented in his dissenting opinion, "the majority's decision appears to rest on a sort of visceral feeling that somehow, if relief were granted, the Court would be impinging on States' Rights", R. 85.

This refusal of the majority of the three-judge court to entertain the complaint flies in the face of principles of fundamental federal responsibility enunciated as early as *Osborn v. Bank of the United States*, 9 Wheat. 738,

6 L. Ed. 204 and restated authoritatively in *Ex parte Young*, 209 U. S. 123. The power of a federal district court to entertain a cause of action seeking relief from threatened enforcement of an unconstitutional state statute is not open to question. *Ex parte Young*, *supra*; *Truax v. Reich*, 239 U. S. 33; *Terrace v. Thompson*, 263 U. S. 197; *Hague v. CIO*, 307 U. S. 496; *American Federation of Labor v. Watson*, 327 U. S. 582; *Pierce v. Society of Sisters*, 268 U. S. 510; *Hale v. Bimco Trading Co.*, 306 U. S. 375. As Judge Wisdom commented on the majority's inability to find any basis for federal jurisdiction, "There is not the slightest doubt as to the constitutional power of a federal court to block prosecution in a state court under an unconstitutional statute. We need look only to the Supremacy Clause to resolve any doubt." R. 103.

The doctrine of *Ex parte Young* underlining the power of a federal court to enjoin the enforcement of unconstitutional state laws "either of a civil or criminal nature", has been restated time and again. This Court has most recently reminded us that this fundamental power to protect "the constitutional rights of individuals from legislative destruction [is] a power recognized at least since our decision in *Marbury v. Madison*." *Wesberry v. Sanders*, 376 U. S. 1. It becomes increasingly clear that "[I]n perspective the doctrine of *Ex parte Young* seems indispensable to the establishment of constitutional government and the rule of law." Wright, Federal Courts, Sect. 48 (1963).

The lower court would negate federal jurisdiction in the face of an assertion of a state's "right to self-preservation" R. 68. However, the fact that a state may ground its threatened unconstitutional action upon an asserted right to self-preservation does not diminish the power or duty of a federal district court to entertain a complaint which seeks relief from impending unconstitutional state action. Increasingly the utilization of state statutes and

procedures to harass and impede the exercise of federally created constitutional rights is sought to be justified as a necessary means of protecting the state from subversion or destruction. See *Gibson v. Florida Committee*, *supra*; *NAACP v. Alabama*, *supra*; *Baggett v. Bullitt*, *supra*; *NAACP v. Louisiana*, *supra*. But the use of the label "self-preservation" no more negates the existence of federal power to protect federal rights than the imposition of any other convenient label. See *Brotherhood of Trainmen v. Virginia*, *supra*; *New York Times v. Sullivan*, *supra*. Time and again, state efforts to restrict First Amendment liberties are predicated upon an assumed necessity to "preserve" the state. And yet federal power to defend the Constitution does not vanish at the mere assertion of such an interest. See for example, *Cramp v. Florida*; *Baggett v. Bullitt*; *NAACP v. Louisiana*; *Herndon v. Lowry*, all *supra*.

If this assertion of a state's right to "self-preservation" can effectively negate the existence of federal judicial power to restrain unconstitutional state action, a new formula has been devised to replace the repudiated doctrines of interposition and nullification. See *Cooper v. Aaron*, 358 U. S. 1. If the opinion of the majority of the court below should be sustained, the fundamental role of the Federal district court as a forum for the protection of federally created constitutional rights will disappear. See *Reynolds v. Sims*, 377 U. S. 533. As the dissenting opinion of Circuit Judge Wisdom so clearly warns, should the invocation of a doctrine of "States' Rights" to justify abdication of federal judicial responsibility be tolerated, the command of the Supremacy Clause will be nullified. R. 86.

An acceptance of the doctrines of federal judicial impotence espoused by District Judges West and Ellis would result in the virtual closing down of the only meaningful judicial tribunals in the states of the deep South presently

available for the vindication of fundamental federal constitutional rights. See Lusky, *Racial Discrimination and the Federal Law: A Problem in Nullification*, 63 Col. 1163 (1963). The elimination of any effective judicial forum for the prompt and decisive protection of these rights, within the context of the ever-increasing demand of Negro citizens for equality and freedom, would create a constitutional crisis of grave dimension. The absence of any tribunal of original jurisdiction prepared to enforce federal constitutional rights would threaten the fundamental assumptions underlying the national commitment to a theory of government under law which encourages and permits social progress and change to take place within the channels of peaceful democratic expression. See *Stromberg v. California*, *supra*; *Whitney v. California*, *supra*; concurring opinion of Mr. Justice Brandeis.

(b) The District Court had equitable jurisdiction to restrain the enforcement of the state statute.

The majority below not only would deny the existence of federal jurisdiction to entertain the complaint but would eliminate virtually any equitable jurisdiction to restrain state criminal statutes or proceedings. This assumption not only disregards the careful affirmative statements by this Court of equitable power to restrain criminal statutes or proceedings threatening immediate and irreparable injury, *Ex parte Young*, *supra*; *Doud v. Hodge*, 350 U. S. 485; *Traux v. Reich*, *supra*; *Pierce v. Society of Sisters*, 268 U. S. 510; *Hague v. CIO*, *supra*; *Spielman Motor Sales Co. v. Dodge*, 295 U. S. 89, but rejects the recent powerful restatements by the Fourth and Fifth Circuits of the necessity for the exercise of equitable power in the area of the protection of federally created civil rights. See *Jordan v. Hutcheson*, 323 F. 2d 597, 4th Cir. 1963; *Bush v. Orleans Parish School Board*, 194 F. Supp. 182, E. D. La., 1961, *aff'd* 367 U. S. 907; *Browder v. Gayle*, 147 F. Supp. 707,

M. D. Ala. 1956, aff'd *per curiam*, 352 U. S. 903; *Morrison v. Davis*, 252 F. 2d 102, 5th Cir. 1958; *United States v. Wood*, 295 F. 2d 772 (1961); *City of Houston v. Dobbs Co.*, 237 F. 2d 428, 5th Cir. 1956; *Denton v. City of Carrollton, Georgia*, 235 F. 2d 481, 5th Cir. 1956.

In the Fifth Circuit, in a series of landmark decisions from *Browder v. Gayle* to *Bailey v. Patterson*, both *supra*, the concept has been forcibly restated that federal equity power must be available where state criminal statutes or proceedings are being utilized to interfere with or impede the exercise of fundamental federal constitutional rights in the effort to achieve the equality guaranteed by the Fourteenth and Fifteenth Amendments. The increasing use of these statutes and proceedings as techniques to harass and deter efforts to obtain equality for Negro citizens has called forth vigorous affirmation of the existence of the necessary federal equity power to protect basic, federally created rights. See Lusky, *Racial Discrimination and the Federal Law: A Problem in Nullification*, *supra*.⁴⁹

Circuit Judge Wisdom has carefully restated the principles applied by the Fifth Circuit in asserting equity jurisdiction in cases involving an imminent threat to fundamental constitutional rights.

⁴⁹ See for example, *United States v. Wood*, 5 Cir. 1961, 295 F. 2d 772.

A Registrar of Voters in a Mississippi county where there were no Negroes registered, without provocation pulled out his revolver and ordered a Negro to leave his office. As the latter was leaving, the Registrar struck him on the back of his head with the revolver. The Negro had conducted a school for voting registration and had encouraged Negroes to register. He was charged with disturbing the peace. The Court of Appeals for the Fifth Circuit enjoined his prosecution, not just because of the violation of his rights, but on the ground that the prosecution, "regardless of outcome, will effectively intimidate Negroes in the exercise of their right to vote." 295 F. 2d at 777. See, also, *Aclony v. Pace*, three-judge court, Georgia, — F. S. —, Nov. 1, 1963, 32 L. W. 2215, opinion by Chief Judge Tuttle.

"Exceptional as this situation should be, there are enough cases now, I believe, for one to state that in this circuit our courts have established the following principle: Federal courts are slow in interfering with criminal proceedings in the ordinary case; for example, to take an obvious case, when a defendant argues that state proceedings should be halted while the federal court considers the validity of a search and seizure. But when the complaint alleges that a man is about to suffer irreparable injury from the State for asserting his basic constitutional rights, federal courts are under a duty to hold a hearing on the complaint and to decide the issues. If the state law is unconstitutional as written or applied, or has been superseded by congressional legislation, the Court should enjoin the enforcement of the law, whether the statute is of a civil or a criminal nature." R. 103.

This application of equitable concepts by the Fifth Circuit to the protection of fundamental constitutional liberties reflects a deep understanding of the issues involved. This Court has pointed out again and again that the fundamental vice in unconstitutionally vague statutes is the deterrent effect such legislation has upon the exercise of basic liberties by countless thousands of citizens. See *Thornhill v. Alabama*; *NAACP v. Button*; *Cramp v. Florida*; *Baggett v. Bullitt*; *Aptheker v. Secretary of State*; all *supra*. The enjoining of the enforcement of proceedings under such statutes is essential not only to protect the constitutional rights of those individuals proceeded against, but primarily to remedy the deadening effect of such deterrence upon the free exercise of fundamental liberties by the citizens at large. See *Thornhill v. Alabama*, *supra*. The enjoining of the enforcement of a statute which "may inhibit the exercise of First Amendment freedoms", *Baggett v. Bullitt*, *supra*, at p. 379, is an exercise of classic equitable

power to prevent "immediate and irreparable injury".⁵⁰ See *Spielman Motor Sales Co. v. Dodge*, *supra*. Fundamental constitutional liberties are "warrants for the here and now". *Watson v. City of Memphis*, 373 U. S. 526. Nothing could be more "irreparable" than injury to these basic freedoms. *Whitney v. California*, concurring opinion, *supra*. In the most important sense of the words the injuries threatened by a statute of the character before the Court are "immediate" and "irreparable". They call insistently for federal equitable relief.

The opinion of the Court in *Douglas v. City of Jeannette*, 319 U. S. 157, is not a decisional hurdle in the development of this essential federal equity power. On several occasions the Fifth Circuit has sought to explain that the Court's statement that equity will not "ordinarily" restrain criminal proceedings does not refute the existence of equitable power to protect fundamental constitutional rights from immediate and irreparable injury. See *City of Houston v. Dobbs*, *supra*; *United States v. Wood*, *supra*; *Morrison v. Davis*, *supra*. Yet, as in the opinion of the majority below, *Douglas v. City of Jeannette* continues to be invoked by those who would restrict or eliminate the role of the federal courts in the protection of federal rights from aggressive state action. But *Douglas v. City of Jeannette* simply cannot be read as a general license to avoid

⁵⁰ This is to be contrasted to such cases as *Stefanelli v. Minard*, 342 U. S. 117 and *Cleary v. Bolger*, 371 U. S. 397, where the only injuries alleged were violations of procedural constitutional rights of defendants in the course of criminal trials rather than a threatened interference with the immediate exercise of First Amendment liberties. It might be argued that these procedural violations could be remedied in the course of the normal appeal, whereas here the injuries to First Amendment liberties caused by proceedings under an unconstitutionally vague statute are immediate and irreparable and without any possible remedy other than direct equitable relief. Thus the injuries flowing from the enforcement of an unduly vague statute are injuries to the immediate exercise of constitutional liberties by the entire class of citizens who may fall within the dragnet sweep.

the responsibilities of federal equity jurisdiction. The decision merely restates the time-honored rules of equity jurisprudence that an injunction will issue only upon a showing of "irreparable injury", 319 U. S. at 164, and that "ordinarily" equity will not restrain criminal prosecutions absent a "showing of danger of irreparable injury", *ibid.* But a prosecution under an unconstitutionally vague state statute which "deters constitutionally protected conduct", *Baggett v. Bullitt, supra*, is not an "ordinary" criminal prosecution. And where as a result of the vagueness of the statute, "the free dissemination of ideas may be the loser", *Baggett v. Bullitt, supra, Smith v. California*, 361 U. S. 147, 151, the injury could not be more serious and irreparable.⁵¹

⁵¹ The Fifth Circuit has specifically discussed the impact of the *Jeannette* doctrine upon the restraining of state proceedings under unconstitutional state statutes. See *Denton v. City of Carrollton, Georgia*, 235 F. 2d 481 (C. A. 5, 1956). In this case a federal suit was brought for a declaratory judgment and injunctive relief against the enforcement of a city ordinance claimed to be unconstitutional under the Fourteenth Amendment. The District Court declined to exercise jurisdiction or to issue the relief sought relying upon *Douglas v. Jeannette*. The Court of Appeals reversed holding:

"But this wholesome rule [*Douglas v. Jeannette*] envisages itself the necessity under circumstances of genuine and irretrievable damage, for affording equitable relief even though the result is to forbid criminal prosecution or other legal proceedings."

See also *City of Houston v. Dobbs Co.*, 232 F. 2d 428 (C. A. 5, 1956) affirming the granting of permanent injunctive relief against the enforcement of a criminal ordinance of the City of Houston. And in *Bush v. Orleans Parish School Board*, 194 F. Supp. 182 (D. Ct. E. D. La. 1961), Judge Rives, for the three-judge court discussed directly the impact of *Jeannette*. Louisiana had enacted a series of criminal laws designed in their operation, to deter Negro citizens from exercising their right to insist upon the desegregation of public education. The Attorney General argued that the rule of *Jeannette* prohibited the federal court from enjoining these criminal

Moreover the equitable concept that "ordinarily" a criminal proceeding will not be enjoined reflects essentially a principle of comity, an historic reluctance of the courts of equity to interfere with the special competence of the courts of law. Where an "ordinary" criminal proceeding is involved, the subject matter of the cause is primarily an application of the criminal laws, traditionally an exclusive concern of the courts of law. In the case of federal-state equity relationships the "ordinary" criminal proceeding in a state court involves, as the Court pointed out in *Jeannette*, primarily the "determination of questions of criminal liability under state law". 319 U. S. at 164. The principles of comity underlying the *Jeannette* rule would thus require that this special competence of the state courts of law be interfered with by the federal courts of equity only upon a "showing of danger of irreparable injury both great and immediate", 319 U. S. at 164. But where the cause becomes exclusively a question of federal law as in the case of an action seeking the enjoining of the enforcement of an unconstitutionally vague statute, any comity considerations underlying federal equity's reluctance to interfere with state criminal law enforcement vanish.⁵² And where deterrence to the exercise of funda-

statutes and proceedings: Judge Rives rejected this assertion stating for the Court:

"True, 'it is a familiar rule that courts of equity do not ordinarily restrain criminal prosecution' *Douglas v. Jeannette*. * * * But this rule cannot be applied mechanically. *NAACP v. Bennett* cf. *Doud v. Hodge*, 350 U. S. 485. Special circumstances will sometimes compel a federal court to act. *Truax v. Reich*, 239 U. S. 33; *Pierce v. Society*, 238 U. S. 510; *Hague v. CIO*, 307 U. S. 496. * * *. This is such a case."

⁵² See for example the discussion of *Browder v. Gayle*, *supra*, in *Morrison v. Davis*, *supra*.

"Discussing *Browder v. Gayle* a panel of the Fifth Circuit (Chief Judge Hutcheson and Judges Tuttle and Jones) said, in a *per curiam* opinion:

[continued on page 88]

mental federal rights occurs as a result of such a statute there is no remedy available other than the enjoining of the enforcement of the statute.⁵³

In essence the majority below has only one rationale for its refusal to exercise federal equity jurisdiction. The lower court concedes that federal equity power lies where "an injunction is necessary in order to afford adequate protection of constitutional rights", R. 67, but would ignore the existence of the equity side of the federal court wherever the "paramount right of a state to self-preservation is at issue", R. 68.

However, as in *New York Times Company v. Sullivan*, *supra*, this Court is required "by neither precedent nor policy to give any more weight" to the phrase "right of self-preservation" than it has to "other 'mere labels' of

[continued from page 87]

"That case disposes of the contention that the federal court should not grant an injunction against the application or enforcement of a state statute, the violation of which carries criminal sanctions. This is not such a case as requires the withholding of federal court action for reason of comity, since for the protection of civil rights of the kind asserted Congress has created a separate and distinct federal cause of action. 42 U.S.C.A. Sec. 1983. Whatever may be the rule as to other threatened prosecutions, the Supreme Court in a case presenting an identical factual issue affirmed the judgment of the trial court in the *Browder* case in which the same contention was advanced. To the extent that this is inconsistent with *Douglas v. City of Jeannette, Pa.*, 319 U. S. 157, 63 S. Ct. 887, 87 L. Ed. 1324, we must consider the earlier case modified." *Morrison v. Davis*, 5 Cir. 1958, 252 F. 2d 102, at 103."

See also *United States v. Wood*, *supra*, reiterating the rationale of *Morrison*.

⁵³ See *Evers v. Dryer*, 358 U. S. 202 holding that a federal district court in Tennessee "erred in not proceeding to the merits" of a suit to enjoin enforcement of a Tennessee criminal statute requiring segregated seating on transportation facilities. See also *Crown Kosher Supermarket v. Gallagher*, 176 F. Supp. 466 (D. Mass. 1959) and on other grounds, 366 U. S. 617.

state law", *New York Times*, *supra* at page 269. See also *NAACP v. Button*. And as with the concept of "libel", like "insurrection", "contempt", "advocacy of unlawful acts", "breach of the peace", "obscenity", "solicitation of legal business" * * * "and the various other formulae for the repression of expression that have been challenged in this Court", *New York Times* at page 269, the state's right to self-preservation "can claim no talismanic immunity from constitutional limitations", *New York Times* at page 269. Like every other label utilized to justify repression of federal liberties, "it must be measured by standards that satisfy the First Amendment", *New York Times* at page 269.

It would be paradoxical indeed if the mere assertion of the right of a state to "self-preservation" could frustrate the ability of the federal equity power to protect citizens from the impact of a statute which, in the name of "self-preservation", is itself destructive of fundamental freedoms. An unconstitutionally vague state statute has no "talismanic immunity" from the reach of federal equity power, and its enforcement will be enjoined by the federal courts, *Baggett v. Bullitt*, *supra*.

(c) Title 28 U. S. C. 2283 is no bar to the injunctive relief sought.

1. Appellees argued in the court below that Title 28 U. S. C. 2283 is a bar to the injunctive relief sought in the complaint. But as Judge Wisdom has pointed out, the federal plenary action was brought prior to the institution of any state court criminal proceeding.⁵⁴ Title 28 U. S. C.

⁵⁴ The complaint was filed on November 12, 1963 R. 1. The Grand Jury was convened for November 20, 1963 R. 53. The stay of proceedings was issued by Circuit Judge Wisdom on November 18, 1963. The proceedings against appellant Dombrowski and appellant-intervenors Smith and Waltzer were not commenced by indictment until January 22nd and January 25th, 1964. See Appendix B.

2283⁵⁵ accordingly does not bar equitable relief. *Ex parte Young*, *supra*; *Truax v. Reich*, *supra*; *Looney v. Eastern Texas R. R.* 247 U. S. 214; *American Houses v. Schneider*, 211 F. 2d 881 (C. A. 3); *Hart and Wechsler, The Federal Courts and the Federal System*, 847; *Moore, Commentary on Judicial Code*, 408; *Note, Enjoining State Court Proceedings*, 74 Harv. L. R. 726, 729 (1961).

It is settled law that 28 U. S. C. 2283 does not bar injunctive relief restraining state court proceedings where the federal action has been instituted prior to the state proceedings. See *Moore, Commentary on Judicial Code, supra*.⁵⁵ This reflects the fundamental principles of comity. Section 2283 was designed to codify. *Smith v. Apple*, 264 U. S. 274. In *Ex parte Young, supra*, this Court in upholding a federal injunction against a threatened state criminal prosecution under a statute challenged as unconstitutional disposed of the contention that a federal court of equity was powerless to enjoin state criminal proceedings which had been commenced after the institution of the federal action challenging the governing statute:

"It is further objected (and the objection really forms part of the contention that the State cannot be sued) that a court of equity has no jurisdiction to enjoin criminal proceedings, by indictment or otherwise under the State law. This, as a general rule is true. But there are exceptions. When such indictment or proceeding is brought to enforce an alleged unconstitutional statute, which is the subject matter of inquiry in a suit already pending in the Federal court, the latter court having first obtained jurisdiction over the subject has the right, in both civil and

⁵⁵ "Nor does 2283 prevent the federal courts from enjoining the institution in the state courts of proceedings to enforce local statutes or administrative orders which are repugnant to the Constitution of the United States, and after the federal jurisdiction has been invoked from protecting that jurisdiction by enjoining interfering state court proceedings subsequently instituted." *Moore, Commentary on Judicial Code*, p. 408.

criminal cases, to hold and maintain such jurisdiction, to the exclusion of all other courts, until its duty is fully performed * * * " *Ex parte Young, supra*,⁵⁶ at pp. 161-162.

Only last Term this Court had the occasion to reaffirm the concept underlying the rule established in *Ex parte Young*. In *Davis v. Mann*, 377 U. S. 678, in rejecting a contention that the federal district court should have abstained from decision, the Court pointed out that failure to exercise federal jurisdiction was inappropriate "especially so where, as here, no state proceeding had been instituted or was pending when the District Court's jurisdiction was invoked", *Davis v. Mann*, at pp. 690-691.

2. Since the federal plenary action was instituted prior to the state court proceedings, Section 2283 has no applica-

⁵⁶ No state court proceeding of any kind was commenced against appellants prior to the institution of the federal plenary action. It has been held that a state criminal proceeding, for the purposes of Sec. 2283, does not commence until after the prosecutor has laid the indictment before the grand jury. *Fenner v. Boykin*, 3 F. 2d 674 (N. D. Ga. 1925), *aff'd* 271 U. S. 240 (1926).

In that case the District Court, holding that the predecessor of Sec. 2283 did not bar an injunction against a threatened criminal prosecution stated (3 F. 2d 676):

"Judicial Code, Sec. 265, does not prohibit the inquiry. Neither the grand jury nor the court of which it is a part will ever be enjoined * * *. Nothing will prevent their action save a regard for the harmony of the judiciary. Though the injunction of solicitor and sheriff would be a substantial injunction of the prosecution, it is not prevented by section 265 because of the well-recognized exception whereby the federal court may thus protect the jurisdiction first acquired by it. The investigation entered upon by the grand jury was not a prosecution. When this bill was filed no indictment had been prepared by the Solicitor General and laid before the grand jury. This Court may prevent his making one since the filing of this bill, or prosecuting one since found, until it shall have fully exhausted its jurisdiction in the premises."

tion. *Ex parte Young* and cases cited *supra*. In any event, Title 28 U. S. C. 2283 by its own terms does not apply to injunctions against state proceedings where injunctive relief has been expressly authorized by an Act of Congress. Title 42 U. S. C. 1983 upon which this complaint is grounded, expressly authorizes injunctive relief against state court proceedings. See Circuit Judge Wisdom dissenting below, R. 107. *Cooper v. Hutchinson*, 184 F. 2d 119 (C. A. 3, 1958); see also, *United States v. Wood*, 295 F. 2d 772 (C. A. 5 1961); *Morrison v. Davis*, 257 F. 2d 102 (C. A. 5 1958); *Tribune Review Publishing Co. v. Thomas*, 153 F. Supp. 486 (W. D. Pa. 1957). See Moore, 1A Federal Practice, Paragraph 0.213(2) P. 2417.⁵⁷

(d) The Doctrine of Abstention cannot justify the District Court's refusal to adjudicate the Federal issues raised.

The majority of the District Court would cloak its abdication of federal judicial responsibility with the mantle of the doctrine of "abstention". But this Court has faced the necessity recently of firmly rejecting this conceptual technique for evading the duty of the federal district courts to exercise the jurisdiction conferred upon them by the Congress and the Constitution to protect federally created rights. *Baggett v. Bullitt*, *supra*; *Griffin v. County School Board of Prince Edward County*, 377 U. S. 218; *Davis v. Mann*, *supra*; *McNeese v. Board of Education*, 373 U. S. 668.

⁵⁷ But cf. *Baines v. Danville*, 4th Cir., decided August 10, 1964, petition for rehearing pending. In *Baines* the Court of Appeals for the Fourth Circuit has recently divided three to two as to whether Title 42 U.S.C. 1983 is an express exception to Section 2283, Circuit Judges Haynsworth, Boreman and Bryan holding that 1983 is not an express exception to 2283 and Chief Judge Sobeloff and Circuit Judge Bell, in dissent holding that 1983 does fall within the "expressly authorized" exception. The Court in *Baines*, however, unanimously reversed the District Court's refusal to entertain a complaint seeking equitable relief against future arrests and prosecutions under an alleged unconstitutional city ordinance and state court injunction.

The decision this June in *Baggett v. Bullitt* wholly disposes of any contention that the federal courts should abstain from enjoining the enforcement of this Louisiana statute. In *Baggett* the Court was asked to affirm a decision by a three-judge District Court that federal adjudication of the constitutionality of Washington's 1931 oath statute was not proper prior to proceedings in the state courts which might resolve or avoid the constitutional issue. 215 F. Supp. 439.

This Court refused to apply the doctrine of abstention developed initially in *Railroad Commission v. Pullman Co.*, 312 U. S. 496 to the Washington statute for reasons which are dispositive here. As the Court found it necessary to state sharply at the outset of its discussion "the abstention doctrine is not an automatic rule applied whenever a federal court is faced with a doubtful issue of state law". *Baggett*, p. 375. See also *Davis v. Mann*; *Griffin v. County School Board*; *McNeese v. Board of Education*, all *supra*. See also *England v. Louisiana State Board*, 375 U. S. 411; *Hostetter v. Idlewild Bon Voyage Co.*, 375 U. S. 809. The district courts are not required to defer automatically to the state courts in the adjudication of federal constitutional questions. Rather the discretionary abstention from decision is permissible only where "there exist the 'special circumstances' *Propper v. Clark*, 337 U. S. 472 prerequisite to its application [which] must be made on a case to case basis." *Baggett* at p. 375. And as in *Baggett* "Those special circumstances are not present here."

The fundamental reason why the Court found that any concept of abstention was impermissible in *Baggett* applies with equal force here. As the Court said in respect to the Washington statute, "We doubt, in the first place, that a construction of the oath provisions, in light of the vagueness challenge, would avoid or fundamentally alter the constitutional issue raised in this litigation" *Baggett* at 375-376. This is the heart of the

matter. As in *Baggett*, "Here the uncertain issue of state law does not turn upon a choice between one or several alternative meanings of a state statute." For as with the Washington statute struck down in *Baggett*, this Louisiana law "is not open to one or a few interpretations, but to an indefinite number." This is precisely the crux of the constitutional vice of vagueness and overbreadth which condemns this statute. And as the Court concludes, in *Baggett* accordingly it is "difficult" to see how state court construction of the "challenged terms * * * could eliminate the vagueness from these terms." And as in *Baggett*, here too "it is fictional to believe that anything less than extensive adjudications, under the impact of a variety of factual situations, would bring the [statute] within the bounds of permissible constitutional certainty." As in *Baggett* "abstention does not require this" and fundamental constitutional considerations prohibit a refusal to exercise federal jurisdiction.

The Court finds that abstention from constitutional decision in *Baggett* is fraught with danger. It is "a result quite costly where the vagueness of a state statute may inhibit the exercise of First Amendment freedoms." *Baggett* at 379. Since abstention "operates to require piecemeal adjudication in many courts, *England v. Louisiana State Board of Medical Examiner*, 375 U. S. 411, * * * remitting these litigants to the state courts * * * would further protract these proceedings * * * with only the likelihood that the case, perhaps years later" will return to this Court "for a decision on the identical issue herein decided." The consequences of such a delayed procedure is devastating in terms of the protection of the fundamentals of free government, for as the Court concludes, "Meanwhile, where the vagueness of a statute deters constitutionally protected conduct the free dissemination of ideas may be the loser."

This Court's decision in *Baggett* rejects out-of-hand the "visceral feeling" of the District Judges below that the

constitutionality of the Louisiana statute must be left to adjudication in the state courts. Where a state statute is unconstitutionally vague inhibiting the exercise of First Amendment freedoms and deterring constitutionally protected conduct a Federal District Court may not abstain from adjudication and relief. *Baggett v. Bullitt*, *supra*.

Both the majority and concurring opinions last term in *England v. Louisiana State Board*, *supra*, reinforce the conclusion that the refusal of the court below to assert Federal power was impermissible. As Judge Wisdom caustically points out in his dissenting opinion the doctrine of abstention has been "developing as nicely as if Dr. Frankenstein were in charge of it"—R. 103. The majority opinion below reflects a growing tendency in certain district courts in the Fourth and Fifth Circuits to avoid federal responsibility for the protection of basic civil rights by characterizing loosely any exercise of federal jurisdiction in this area as interference with "states rights."⁵⁸ This reluctance to utilize statutory federal power is generally justified by a reference to the doctrine of abstention. See Lusky, *Racial Discrimination and the Federal Law*, *supra*; ⁵⁹ and Note 73 Yale 90 (1963), *Judicial Performance in the Fifth Circuit*. The opinions in

⁵⁸ See *Darby v. Daniel*, 168 F. Supp. 170, 195 (S. D. Miss. 1958); *Lassiter v. Taylor*, 152 F. Supp. 295 (E. D. N. C. 1957); *Bryan v. Austin*, 148 F. Supp. 563 (E. D. S. C. 1957), *vacated as moot*, 354 U. S. 933 (1957).

⁵⁹ "The abstention doctrine which the district court relied on should likewise be repudiated or sharply limited. Originally devised as a judge-made rule of self-restraint designed to give the state courts primary jurisdiction over difficult problems of interpreting local legislation, it has enjoyed a considerable vogue in Southern race discrimination cases. It has tended to paralyze the federal courts in doing the job they were primarily designed for—enforcement of locally unpopular federal law." Lusky, *Racial Discrimination and the Federal Law: A Problem in Nullification*, Col. L. R., Vol. 63, p. 1183 (Nov. 1963).

England provide an incisive antidote to the increasingly widespread misuse of the concept. Mr. Justice Brennan has restated in *England* the threshold principle of law which the majority below wholly ignores in approaching the question of its power and duty to act. This is the fundamental proposition that "Congress, pursuant to constitutional authorization, has conferred specific heads of jurisdiction upon the federal courts." *England* at 415, and that accordingly "when a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction" *England* at 415, restating *Willcox v. Consolidated Gas Co.*, 217 U. S. 19.

A Justice Brennan points out the abstention doctrine may not be utilized to undermine this basic assumption of the Federal system. This is because "abstention is a judge-fashioned vehicle for according appropriate deference to the 'respective competence of the state and Federal court systems' *Louisiana P. & L. Co. v. Thibodaux*, 360 U. S. 25" *England* at 415. Justice Brennan then analyzes the essential comity considerations which govern the application of the doctrine. "Its recognition of the role of state courts as the final expositors of state law implies no disregard for the primacy of the federal judiciary in deciding questions of federal law" *England* at 415-416. This is, we suggest, the heart of the problem. As we have seen in analyzing the *Jeannette* rule the touchstone here also is the recognition that the challenge to an unconstitutionally vague state statute which trenches upon First Amendment liberties is a fundamental question of federal law falling within the special "competence" of the "federal court systems".⁶⁰ It is a question in which the "primacy of the federal judiciary in deciding questions of

⁶⁰ It follows *a fortiori* that the issue of preemption is certainly within that special "competence". The District Court found it impossible to refrain from ruling on it in contradiction to its own rationale R. 70-72.

federal law" is properly invoked.^{60a} The comity principles underlying the doctrine of abstention require here that the Federal system recognizes its "primacy" and its "competence" and accepts its "duty" to adjudicate. *England* at 415-416.⁶¹

Both Justice Brennan's opinion for the majority in *England* and Justice Douglas' concurring opinion stress

^{60a} The limitations upon the doctrine of abstention spelled out in footnote 7 to the Court's opinion in *England* are instructive in considering the inappropriateness of applying the concept to the present situation. The Court in *England* points out that "the doctrine contemplates only 'that controversies involving unsettled questions of state law [may] be decided in state tribunals preliminary to a federal court's consideration of the underlying federal constitutional questions' *City of Meridian v. Southern Bell Tel. & Tel. Co.*, 358 U. S. 639" and "that decision of the federal question be deferred until the potentially controlling state-law issue is authoritatively put to rest." *United Gas Pipe Line Co. v. Ideal Cement Co.*, 369 U. S. 134. Here, as we have discussed, the controversy involves no "unsettled questions of state law, and there is no 'potentially controlling state-law issue' to be authoritatively put to rest." The issue is exclusively a question of federal law and is peculiarly within the "competence of the federal court system." And unlike *Spector Motor Service Inc. v. McLaughlin*, 323 U. S. 101, here there is no necessity for deciding "questions of constitutionality on the basis of preliminary guesses regarding local law."

⁶¹ This Court has recently in several other decisions made it emphatically clear that the doctrine of abstention will not be permitted to undermine the primacy of federal jurisdiction in areas of federal competence. In *Griffin v. City School Board of Prince Edward County*, 377 U. S. 218, the Court summarily rejected a decision of the Fourth Circuit, Judge Bell dissenting, 322 F. 2d 332, refusing to adjudicate a controversy involving the enforcement of the Equal Protection Clause in a school segregation case. In *Davis v. Mann*, 377 U. S. 678, the Court rejected a contention that the lower court should have abstained to permit prior adjudication by the state court in a reapportionment case. The Court found that abstention was particularly inappropriate "especially so where, as here, no state proceeding had been instituted or was pending when the District Court's jurisdiction was invoked" *Davis* at pp. 690-691.

that the *Pullman* doctrine and its progeny deal legitimately only with the area of federal deference to state courts on questions of local law. As Justice Douglas points out, *Pullman* only says, "The 'last word' as to the meaning of local law 'belongs neither to us nor to the district court but to the Supreme Court of Texas'." But neither *Pullman* nor any of the decisions of this Court applying the doctrine suggest that a "deference" to state courts on matters of local law sanctions a disregard for the mandate of the Supremacy Clause in respect to the "primacy of the federal judiciary in deciding questions of federal law" *England*, at 416.

Underlying the entire majority opinion below is the assumption that what comity really requires is a rule which would place upon the federal district courts a duty to defer consideration of federal issues until the state courts have first passed upon these "questions of federal law". The majority opinion is quite explicit in this respect.

"If the action taken by this Court on January 10, 1964 is construed as validating the Communist Control Act as to its constitutionality this action is, of the Court's own motion, hereby vacated, the Court here refraining from taking any action in advance of appropriate proceedings in the State Courts at the State Level. All these matters we commit to the hands of the state criminal tribunals who are equally competent to conscientiously apply protected constitutional rights, subject, of course, to proper supervision by the State Appellate-level courts and the United States Supreme Court." R. 72.

This is a total distortion of this Court's opinion in *Pullman*, see *England v. Louisiana State Board*, *supra*, and rests essentially upon the long repudiated theory that this is a confederation of equal sovereignties rather than a Federal Union. Cf. *Cooper v. Aaron*, *supra*; *Bush v. New Orleans Parish School Board*, *supra*; *United States v. City of Jackson*, 318 F. 2d 1, 5 Cir. 1963.

The rules of comity which govern the relationship of the federal courts to the state courts must reflect the nature of the political system they are designed to operate within. This is a Federal union. It is not a confederation of equal sovereign powers. The doctrines of American federalism which have emerged through struggles and conflict can only be understood in terms of the original repudiation of the political philosophy underlying the Articles of Confederation. Fundamental to the system of government which emerged after 1787 was the recognition that the alliance of independent and separate sovereign states had been replaced by a Federal Union. This new political form represented a bold experiment in government. In order to preserve the values of the independent local self-government entities which the states represented, within the framework of a unified Nation with power to survive and protect the interests of all its citizens, a fundamental allocation of responsibilities had to be made. In this distribution of power the primary responsibility for the protection and preservation of the Union itself and the system of government upon which it rests fell upon the national government. And to implement this responsibility the Supremacy Clause was written.

It is within this context that the role of the district court in this litigation must be examined. The preservation of American federalism, the necessary objective of any rule of comity, requires that this original and fundamental division of responsibility between the national government and the states be respected. The healthy values of a federal system are no more served by a denial of national responsibility than by an intrusion into local responsibility. Upon the national government and the national courts has been placed the primary responsibility for the preservation of those aspects of government essential to the existence of the Federal Union.

Nothing is more basic to the functioning of the system of government upon which the Union itself rests than the

preservation of the fundamental liberties of the people guaranteed in the First, the Fourteenth and the Fifteenth Amendments to the Federal Constitution. As Chief Justice Stone suggested in the now famous *Caroline Products* footnote, essential to the functioning of any of the institutions of American government is the ability of the people to provide the ultimate controls over these institutions through the free processes of political democratic activity. Accordingly, paramount to any other consideration is the pressing necessity for preserving to the people the free access to these fundamental political processes of democracy. These channels of democratic expression enunciated and guaranteed in the First, Fourteenth and Fifteenth Amendments, represent the ultimate form of control over both the federal and state units of government. Without free access to these ultimate controls American federalism cannot work. It is in this sense that no responsibility could be graver than the duty imposed upon the national courts by the original division of responsibility to protect and vindicate the fundamental liberties of American citizens guaranteed in the Constitution. It is a task they may not abstain from. It is an obligation they may not avoid. As the Chief Justice said for the national judiciary last Term, "a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us." *Reynolds v. Sims, supra.*

Circuit Judge Wisdom's response to the majority renunciation of federal judicial responsibility in this case reflects this fundamental conception of the role and duty of the federal district courts.

" * * * the crowning glory of American federalism is not States' Rights. It is the protection the United States Constitution gives to the private citizen against *all* wrongful governmental invasion of fundamental rights and freedoms.

"When the wrongful invasion comes from the State, and especially when the unlawful state action

is locally popular or when there is local disapproval of the requirements of federal law, federal courts must expect to bear the primary responsibility for protecting the individual. This responsibility is not new. It did not start with the *School Segregation Cases*. It is close to the heart of the American Federal Union. It is implicit in the replacement of the Articles of Confederation by the Constitution. It makes federalism workable." R. 86, 87

The refusal of a federal court to decide can be as destructive of the fundamental values of American federalism as the now repudiated doctrines of interposition and nullification. It reflects the same rejection of the supremacy of federal law and the primacy of the Federal Union. But in one sense it presents an even more serious challenge to the survival of American federalism than the open defiance of national authority embodied in the frank espousal of nullification. Cf. *Cooper v. Aaron*, *supra*. The supremacy of national law and national policy depends upon the corrective ability of the federal court system to control state encroachment upon or rejection of national law. See Madison, 5 Elliott's Debates (Lipp. ed. 1941) p. 159; *England v. Louisiana State Board*, *supra*. Mr. Justice Douglas concurring at p. 423. If the federal courts fail to provide the corrective remedy which the federal scheme requires, no effective original tribunal will exist in large areas of the country for the protection of fundamental federal rights. This would present a challenge to the survival of a philosophy of free government based upon the rule of law. It is an alternative this Court cannot accept. For as the Court has recently said, "Courts sit to adjudicate controversies involving alleged denials of constitutional rights", *Lucas v. 44th General Assembly of Colorado*, 377 U. S. 713. The Federal District Court below had, under the Constitution and the laws of the United States, the solemn duty to adjudicate the fundamental federal question presented to it. It could not abstain from that responsibility consistent with its "oath" and "office". *Reynolds v. Sims*, *supra*.

POINT IV

The refusal to permit appellants to adduce any evidence as to the constitutionality of the statutes as applied violated due process of law.

The majority of the three-judge court refused to permit appellants to adduce any evidence whatsoever either in support of their contention that the state statutes were unconstitutional as applied, or in support of the charge, under Title 42 U. S. C. 1983 and 1985, that the appellees were engaged in a conspiracy under color of state law to deprive them of federal constitutional rights.⁶²

In order to justify its refusal to permit evidence of unconstitutional application the majority below found that the complaint failed to state a cause of action for relief. But as Judge Wisdom points out in his dissection of the majority rationale, this results in a rather incredible conclusion. A federal district court here holds that there is no cause of action or right to relief in a federal court to protect federally guaranteed rights when citizens are threatened with prosecution under a state "anti-subversive" law not because they are subversive but because they advocate equality for Negro citizens. Judge Wisdom states the questions sharply:

"Here again the Court reversed itself. At the first hearing the Court agreed unanimously to receive the evidence at a second hearing. This makes sense. There is no way of deciding whether a law is applied

⁶² The District Court originally indicated in the first hearing on December 9th that if it determined that the statute was constitutional on its face it would hold another hearing to receive evidence on the issue of the constitutionality of the statute as applied R. 73. Instead, on January 10th, the court held a hearing on the question as to whether the admission of evidence was required. The appellants made an offer of proof R. 23-29, to which was attached several affidavits R. 30-61.

unconstitutionally without hearing evidence as to its application. Evidence was also admissible to show the purpose, operation, and effect of the law. Now, however, the majority has refused to allow the plaintiffs to prove their case by affidavit or by witnesses. The technical basis for the majority decision was its sustaining of the defendants' motion to dismiss on the ground that 'the complaint failed to state a claim upon which relief can be granted'. This motion, of course, requires the Court to accept as true all of the allegations in the complaint. In effect the Court held that a citizen has no cause or right of action against the State, to defend federally guaranteed rights and freedoms, when *admittedly* the State is using its Anti-Subversion Law against him, not because he is subversive, but because he advocates civil rights for Negroes." R. 93-94

If appellant's cause of action, as described above by Judge Wisdom, is not a basis for relief in a federal court then the Civil Rights Acts and the Fourteenth and Fifteenth Amendments are dead letters. For as Judge Wisdom points out:

"Assuming the truth of the complaint, as the Court *had* to do in order to dismiss the suit, the case is a classic example for raising the shield of the Constitution in protection of a citizen's constitutional rights."

Appellants sought to introduce oral and written evidence to substantiate their claim for relief under the Civil Rights Acts and the Constitution. Judge Wisdom concisely summarized the offer of proof:⁶³

"As emphasized earlier, the plaintiffs contend that, even if the law is valid on its face, the State has searched their homes and offices, seized their property, arrested them, and is about to prosecute

⁶³ The offer of proof is set forth in the Record at pp. 23-29.

them not because they are Communists—they deny any connection with communism—but because their thinking is not compatible with the State's segregation policy. The plaintiffs offer proof in the form of affidavits and witnesses willing to testify.”⁶⁴ R. 93.

Perhaps unsure of its ground for refusing to hear this evidence, the majority argued that although “evidence has been frequently admitted to show unconstitutional application of statutes” R. 74, in this case since “the very vitals of our constitutional system of government are on the line” the appellants should not be allowed to introduce evidence which might result in a public hearing with “publicity attendant therewith” R. 74.⁶⁵ This extraordinary reasoning evoked the comment from the dissenting Circuit Judge that “this rationale illustrates what I mean by the suggestions, respectfully tendered; that perhaps the decision is the result of a visceral reaction” (R. 95).

Evidence tending to show that a state statute otherwise valid on its face is unconstitutional as applied to given circumstances or individuals is clearly admissible. *United States v. Caroline Products Co.*, 304 U. S. 144; *Prentis v. Atlantic Coastline Co.*, 211 U. S. 210; *Railroad Retirement Board v. Alton R.R.*, 295 U. S. 230; *Weaver v. Palmer*, 270 U. S. 402; *Chastleton Corp. v. Sinclair*, 264 U. S. 543; see *Whitney v. California*, 274 U. S. 357, 379.

As Chief Justice Stone pointed out in *Caroline Products*:

“[T]he constitutionality of a statute, valid on its face, may be assailed by proof of facts tending to

⁶⁴ The affidavits of Dr. James A. Drombowski, Benjamin Smith, Bruce Waltzer, Dr. Martin Luther King, Jr., Rev. Fred L. Shuttlesworth, Rev. C. T. Vivian, Bishop Edgar A. Love, and Dr. Herman H. Long were attached to the offer of proof R. 30-61.

⁶⁵ The District Court majority would avoid “a Star Chamber proceeding with all the ‘folderol’ and publicity attendant therewith” R. 74.

article [or person] is without reason * * * show. that the statute as applied to a particular

United States v. Caroline Products, supra.

And as Mr. Justice Holmes has said,

“[T]he determination as to [the plaintiffs'] rights turns almost wholly upon the facts to be found * * *. All their constitutional rights, we repeat, depend upon what the facts are found to be * * *. They are not to be forbidden to try those facts before a court of their own choosing, if otherwise competent.”

Prentiss v. Atlantic Coast Line Co., supra.

Nothing could be more threatening to the “very vitals of our constitutional system of government” R. 74, than the denial to these appellants of their day in court out of fear of the “publicity attendant” to the airing before the community and the nation of the serious charges they have brought against these state officials. Due process of law is not such a slender reed that it bends before the strong winds of public scrutiny. Cf. *New York Times v. Sullivan, supra*. The issue raised by the refusal to accept evidence is put quite simply by the dissenting Judge. “I know this, however; the plaintiffs have a right to sue in the federal district court and fair play entitles them to a day in court to make their proof” R. 95.⁶⁶

⁶⁶ The failure of the District Court to permit appellants to adduce evidence in support of the cause of action alleged under Title 42 U. S. C. 1983 and 1985 is another reflection of abdication of fundamental responsibility under the federal system. As Judge Wisdom commented:

“Under any rational concept of federalism the federal district court has the primary responsibility and the duty to determine whether a state court proceeding is or is not a disguised effort to maintain the State’s unyielding policy of segregation at the expense of the individual citizen’s federally guaranteed rights and freedoms.”

Conclusion

The issues presented in this appeal are far reaching in their impact upon decisive areas in our national life. They are inextricably bound up with the increasingly pressing question of our era—whether a system of democratic legal institutions can function so as to guarantee the peaceful achievement of equality and freedom for all American citizens. It is in this sense that the protection of the exercise of the fundamental freedoms of speech, press, assembly and association by those who seek the constitutional goal of equality for all is the highest responsibility of the federal courts. It is as Judge Wisdom writes a responsibility “close to the heart of the American Federal Union”.

• • •

The decision of the District Court should be reversed, the complaint reinstated and the case remanded with instructions to enjoin the enforcement of the Subversive Activities and Communist Control Law (Louisiana Revised Statutes, 14:358 through 14:374) and the Communist Propaganda Law.

ganda Control Law (Louisiana Revised Statutes, 14:390 through 14:390.8).

Respectfully submitted,

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APPENDIX A

Statutes Involved

LOUISIANA REVISED STATUTES

14:358 through 14:388

**Sec. 358. SUBVERSIVE ACTIVITIES AND COMMUNIST CONTROL
LAW; DECLARATION OF PUBLIC POLICY**

In the interpretation and application of R. S. 14:358 through R. S. 14:374 the public policy of this state is declared to be as follows:

There exists a world communist movement, directed by the Union of Soviet Socialist Republics and its satellites, which has as its declared objective world control. Such world control is to be brought about by aggression, force and violence, and is to be accomplished in large by infiltrating tactics involving the use of fraud, espionage, sabotage, infiltration, propaganda, terrorism and treachery. Since the state of Louisiana is the location of many of the nation's most vital military establishments, and since it is a producer of many of the most essential products for national defense, the state of Louisiana is a most probable target for those who seek by force and violence to overthrow constitutional government, and is in imminent danger of communist espionage, infiltration and sabotage. Communist control of a country is characterized by an absolute denial of the right of self-government and by the abolition of those personal liberties which are cherished and held sacred in the state of Louisiana and in the United States of America. The world communist movement constitutes a clear and present danger to the citizens of the state of Louisiana. The public good, and the general welfare of the citizens of this state require the immediate enactment of this measure. Acts 1962, No. 270, Sec. 1.

*Appendix A—Statutes Involved***SEC. 359. DEFINITIONS**

(1) A "Communist" means a person who is a member of the Communist Party or is proven to be substantially under the discipline and control of the International Communist Conspiracy.

(2) The "Communist Party" means the Communist Party, U. S. A., or any of its direct successors and shall include any other organization which is directed, dominated or controlled by the Soviet Union, by any of its satellite countries or by the government of any other communist country; or any organization which in any manner advocates or acts to further the success of the program of world domination of the international communist conspiracy.

(3) "Communist Front Organization" shall, for the purpose of this act include any communist action organization, communist front organization, communist infiltrated organization or communist controlled organization and the fact that an organization has been officially cited or identified by the Attorney General of the United States, the Subversive Activities Control Board of the United States or any Committee or Subcommittee of the United States Congress as a communist organization, a communist action organization, a communist front organization, a communist infiltrated organization or has been in any other way officially cited or identified by any of these aforementioned authorities as a communist controlled organization, shall be considered presumptive evidence of the factual status of any such organization.

(4) "Organization" means an organization, corporation, company, partnership association, trust, foundation, fund, club, society, committee, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

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(5) "Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy, or to assist in the overthrow or destruction of the constitutional form of the government of the state of Louisiana, or of any political subdivision thereof by revolution, force, violence or other unlawful means, or any other organization which seeks by unconstitutional or illegal means to overthrow or destroy the government of the state of Louisiana or any political subdivision thereof and to establish in place thereof any form of government not responsible to the people of the state of Louisiana under the Constitution of the state of Louisiana.

(6) "Foreign subversive organization" means any organization, directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy, or to assist in the overthrow or destruction of the constitutional form of the government of the state of Louisiana, or of any political subdivision thereof to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual.

(7) "Foreign Government" means the government of any country, nation or group of nations other than the government of the United States of America or one of the states thereof.

(8) "Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempts to commit, or aid in the commis-

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sion of any act intended to overthrow, destroy, or to assist in the overthrow or destruction of the constitutional form of the government of the state of Louisiana, or any political subdivision thereof by revolution, force, violence or other unlawful means; or who is a member of a subversive organization or a foreign subversive organization. Acts 1962, No. 270, Sec. 1.

Sec. 360. REGISTRATION OF COMMUNISTS

A. Each person remaining in this state for as many as five consecutive days after July 30, 1962, who is a communist or is knowingly a member of a communist front organization, shall register with the department of public safety of the state of Louisiana on or before the fifth consecutive day that such person remains in this state; and, so long as he remains in this state, shall register annually with said department between the first and fifteenth day of January.

B. Registration shall be under oath and shall set forth the name (including any assumed name used or in use), address, business occupation, purpose of presence in the state of Louisiana; sources of income, place of birth, places of former residence, and features of identification, including fingerprints of the registrant; organizations of which registrant is a member; and any other information requested by the department of public safety which is reasonably relevant to the purpose of R. S. 14:358 through R. S. 14:374.

C. Under order of any court of record, the registration records shall be open for inspection by any person in whose favor such order is granted; and the record shall at all times, without the need for a court order, be open for inspection by any law enforcement officer of this state, of the United States or of any state or territory of the United States. At the discretion of the department of public

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safety, these records may also be open for inspection by the general public or by any member thereof. Acts 1962, No. 270, Sec. 1.

Sec. 361. COMMUNIST PARTY NOT TO APPEAR ON ELECTION BALLOTS

The name of any communist or of any nominee of the communist party shall not be printed upon any ballot used in any primary or general election in the state or in any political subdivision thereof. Acts 1962, No. 270, Sec. 1.

Sec. 362. PUBLIC OFFICE; DISQUALIFICATION OF COMMUNISTS

No person may hold any non-elective position, job or office for the state of Louisiana, or any political subdivision thereof, where the remuneration of said position, job or office is paid in whole or in part by public moneys or funds of the state of Louisiana, or of any political subdivision thereof, where the evidence shows such person to be a communist or a knowing member of a communist front organization. Acts 1962, No. 270, Sec. 1.

Sec. 363. ENFORCEMENT

The attorney general of the state of Louisiana, all district and parish attorneys, the department of public safety, and all law enforcement officers of this state shall each be charged with the duty of enforcing the provisions of R. S. 14:358 through R. S. 14:374. Acts 1962, No. 270, Sec. 1.

Sec. 364. ACTS PROHIBITED

It shall be a felony for any person knowingly and willfully to

(1) Commit, attempt to commit, or aid in the commission of any act intended to overthrow or destroy, or to

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assist in the overthrow or destruction of the constitutional form of government of the state of Louisiana, or any political subdivision thereof, by revolution, force, violence, or other unlawful means, or

(2) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the state of Louisiana, or of any political subdivision thereof, or

(3) Conspire with one or more persons to commit any such act;

(4) Assist in the formation or participate in the management, or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(5) Destroy any books, records, or files, or secrete any funds in this state of a subversive organization or a foreign subversive organization, knowing said organization to be such; or

(6) To become or to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization; or

(7) Fail to register as required in R. S. 14:360 or to make any registration which contains any material false statement or omission. Acts 1962, No. 270, Sec. 1.

Sec. 365. PENALTIES

Any person convicted of violating any of the provisions of R. S. 14:364 shall be fined not more than ten thousand dollars or imprisoned at hard labor for not more than ten years, or both. Acts 1962, No. 270, Sec. 1.

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Sec. 366. ADDITIONAL PENALTIES

Any person convicted by a court of competent jurisdiction of violating any of the provisions of R. S. 14:358 through 14:374 in addition to all other penalties therein provided shall from the date of conviction be barred from:

(1) Holding any office, elective or appointive, or any other position of profit or trust in or employment by the government of the state of Louisiana or of any agency thereof or of any parish, municipal corporation or other political subdivision of said state;

(2) Filing or offering for election to any public office in the state of Louisiana; or

(3) Voting in any election in this state. Acts 1962, No. 270, Sec. 1.

Sec. 367. DISSOLUTION OF SUBVERSIVE ORGANIZATIONS; FORFEITURE OF CHARTER; SEIZURE OF BOOKS AND RECORDS

It shall be unlawful for any subversive organization or foreign subversive organizations to exist or function in the state of Louisiana and any organization which by a court of competent jurisdiction is found to have violated the provisions of this Section shall be dissolved, and if it be a corporation organized and existing under the laws of the state of Louisiana a finding by a court of competent jurisdiction that it has violated the provisions of this Section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited, and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this Section shall be seized by and for the state of Louisiana, the funds to be deposited in the state treasury and the books, records, files and other property to be turned over

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to the department of public safety of Louisiana. Acts 1962, No. 270, Sec. 1.

Sec. 368. JUDGE'S CHARGE TO GRAND JURY

The judge of any court exercising general criminal jurisdiction, when in his discretion it appears appropriate, or when informed by the attorney general or district attorney that there is information or evidence of violations of the provisions of this act to be considered by the grand jury, shall charge the grand jury to inquire into violations of R. S. 14:358 through 14:374 for the purpose of proper action, and further to inquire generally into the purposes, processes, and activities and any other matters affecting communism or any related or other subversive organizations, associations, groups or persons. Acts 1962, No. 270, Sec. 1.

Sec. 369. INELIGIBILITY OF SUBVERSIVE PERSON FOR PUBLIC OFFICE OR EMPLOYMENT

No subversive person, as defined in R. S. 14:359, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government of, or in the administration of the business of this state, or of any parish, municipality, or other political subdivision of this state. Acts 1962, No. 270, Sec. 1.

Sec. 370. SCREENING OF PROSPECTIVE PUBLIC OFFICIALS AND EMPLOYEES

Every person and every board, commission, council, department, court or other agency of the state of Louisiana or any political subdivision thereof, who appoints, employs or supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain,

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before any person, including teachers and other employees of any public educational institution in this state, is appointed or employed, that he is not a subversive person, and that there are no reasonable grounds to believe such person is a subversive person. In the event reasonable grounds exist, he shall not be appointed or employed. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written affidavit containing answers to such inquiries as may be reasonably material. Acts 1962, No. 270, Sec. 1.

Sec. 371: EXCEPTIONS TO SCREENING REQUIREMENTS

The inquiries prescribed in R. S. 14:370, other than the written statement to be executed by an applicant for employment, shall not be required as a pre-requisite to the employment of any persons in the classification of laborers in any case in which the employing authority shall in his or its discretion determine, and by rule or regulation specify the reason why the nature of the work to be performed is such that employment of persons as to whom there may be reasonable grounds to believe that they are subversive persons as defined in R. S. 14:359 will not be dangerous to the health or security of the citizens or the security of the government of the state of Louisiana, or any political subdivision thereof. Acts 1962, No. 270, Sec. 1.

Sec. 372. SUFFICIENCY OF GROUNDS FOR DISCHARGE FROM OFFICE OR POSITION; EFFECT OF CIVIL SERVICE LAWS

Reasonable grounds to believe that any person is a subversive person, as defined in R. S. 14:359, shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any parish, municipality or other political subdivision of this state, or any agency thereof. The appropriate civil service com-

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mission or board shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in R.S. 14:359, shall be accorded notice and opportunity to be heard, in accordance with the procedures prescribed by law for discharges for other reasons. Every person and every board, commission, council, department, or other agency of the state of Louisiana or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in R.S. 14:359, after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of R.S. 14:358-14:374 shall promptly report to the department of public safety the fact of and the circumstances surrounding such discharge. Acts 1962, No. 270, Sec. 1.

Sec. 373. CANDIDATES FOR PUBLIC OFFICE; FILING OF NON-SUBVERSIVE AFFIDAVITS

No persons shall become a candidate nor shall be certified by any political party as a candidate for election to any public office created by the constitution or laws of this state unless such candidate or certification by the political party shall have attached to the qualifying papers, the nominating petition or nominating papers filed with the appropriate party committee of this state or the Secretary of State, whichever the case may be, a sworn affidavit that the candidate is not and never has been a subversive person as defined in R.S. 14:359. No qualification of candidates, nominating petition or nominating papers for such office shall be received for filing by the official aforesaid unless the same are accompanied by the affidavit, and there shall not be entered upon any ballot or voting machine at any election the name of any person who has failed or re-

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fused to make the required affidavit. Acts 1962, No. 270, Sec. 1.

Sec. 374. CITATION OF SUBVERSIVE ACTIVITIES AND COMMUNIST CONTROL LAW

R.S. 14:358 through R.S. 14:374 may be cited as the Subversive Activities and Communist Control Law. Acts 1962, No. 270, Sec. 1.

Secs. 14:375, 14:376. DELETED

Secs. 14:377-14:380. REPEALED. ACTS 1962, No. 270, SEC. 1

Sec. 385. ORGANIZATIONS ENGAGED IN SOCIAL, EDUCATIONAL OR POLITICAL ACTIVITIES; COMMUNIST AFFILIATIONS PROHIBITED

Non-trading corporations, partnerships and associations of persons operating in the state of Louisiana and engaged in social, educational or political activities are prohibited from being affiliated with any foreign or out of state non-trading corporations, partnerships or associations of persons, any of the officers or members of the board of directors of which are members of Communist, Communist-front or subversive organizations, as cited by the House of Congress un-American Activities Committee, or the United States Attorney. Reports or information from the files of the Committee on un-American Activities of the U. S. House of Representatives shall constitute prima facie evidence of such membership in said organizations. Acts 1958, No. 260, Sec. 1.

Sec. 386. AFFIDAVITS

As a condition precedent to being authorized to operate or conduct any activities in the state of Louisiana, every non-trading corporation, partnership or association of per-

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sons engaged in social, educational or political activities, affiliated with any similar non-trading corporation, partnership or association of persons, chartered, created or operating under the laws of any other state, shall file with the secretary of state yearly, on or before December 31, an affidavit attesting to the fact that none of the officers of such out of state or foreign corporation, partnership or association of persons with which it is affiliated, is a member of any such organization cited by the House of Congress un-American Activities Committee, or the United States Attorney General, as Communist, Communist-front or subversive. Acts 1958, No. 260, Sec. 2.

Sec. 387. FAILURE TO FILE AFFIDAVIT; PENALTY

Failure to file the affidavit required by R.S. 14:386 shall constitute a misdemeanor, and the officers and members of such non-trading corporation, partnership or association of persons operating in this state and affiliated with such out of state or foreign organizations, failing to file such affidavit, shall be deemed guilty of a misdemeanor and upon conviction by a court of competent jurisdiction shall be fined \$100.00 and imprisoned 30 days in the parish jail. Acts 1958, No. 260, Sec. 3.

Sec. 388. FALSE STATEMENTS IN AFFIDAVIT AS PERJURY

Any false statement under oath contained in the affidavit required by R.S. 14:386 filed with the secretary of state shall constitute perjury and shall be punished as provided by R.S. 14:123. Acts 1958, No. 260, Sec. 4.

*Appendix A—Statutes Involved*LOUISIANA REVISED STATUTES
14:390 through 14:390.5

Sec. 390. DECLARATION OF PUBLIC POLICY

In the interpretation and application of R.S. 14:390 and the Sub-sections thereof, and as a result of certain evidence having been presented to the Joint Legislative Committee on Un-American Activities of this Legislature, the public policy of this state is declared to be as follows:

There exists a clear, present and distinct danger to the security of the state of Louisiana and the well-being and security of the citizens of Louisiana arising from the infiltration of a significant amount of communist propaganda into the state. In addition, this state is a stopping place or "way station" for sizeable shipments of dangerous communist propaganda to the rest of the United States and to many foreign countries.

The danger of communist propaganda lies not in its being "different" in the philosophy it expresses from the philosophy generally held in this state and nation, but instead in the fact that it is a specific tool or weapon used by the communists for the express purpose of bringing about the forcible total destruction or subjugation of this state and nation and the total eradication of the philosophy of freedom upon which this state and nation were founded. "Words are bullets" and the communists know it and use them so. Whatever guarantees of sovereignty and freedom are enjoyed by this state and its citizens are certain to vanish if the United States of America is destroyed or taken over by propaganda infiltration or otherwise against the United States is and should rightly be considered an attack upon or clear and present danger to the state of Louisiana and its citizens. Such attacks should therefore be the subject of concurrent jurisdiction through remedial legislation such as is now in effect on both the state and

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federal level concerning such dangers as the narcotics traffic, bank robbery, kidnapping, etc. We hereby declare that the danger of communist propaganda infiltration is even greater than the danger from narcotics, pornographic literature, switch blade knives, burglar tools or illicit alcohol in dry jurisdictions, all of which have been the subject of valid statutory regulation by the States within the constitutional framework. The federal legislation on this subject matter is either inadequate in its scope, or not being effectively enforced, as much communistic propaganda material unlabeled and unidentified as such, is in fact entering the state of Louisiana at this time.

We further declare that communist propaganda, properly identified in terms similar to those used in the Foreign Agents Registration Act of the United States, is hereby identified as illicit dangerous contraband material. We further declare that certain exemptions hereinafter provided are for the purpose of allowing bona fide students of foreign languages, foreign affairs or foreign political systems, other interested individuals, and also bona fide educational institutions, to obtain this contraband upon specifically requesting its delivery for the purpose of personal or institutional use in the due course of the educational process. We do not believe that the possession or use of such material by knowing and informed individuals for their personal use is any significant danger, and in fact it might be of some benefit in informing such individuals of the cynical and insidious nature of the communist party line. In view of these facts and so that any user of such materials will be adequately forewarned, we declare that all such material in any way entering the state of Louisiana should be required to be clearly labeled as communist propaganda as hereinafter provided. Added Acts 1962, No. 245, Sec. 1.

*Appendix A—Statutes Involved***Sec. 390.1 DEFINITION OF COMMUNIST PROPAGANDA**

(1) "Communist propaganda" means any oral, visual, graphic, written, pictorial or other communication which is issued, prepared, printed, procured, distributed or disseminated by the Soviet Union, any of its satellite countries, or by the government of any other communist country or any agent of the Soviet Union, its satellite countries or any other communist country, wherever located, or, by any communist organization, communist action organization, communist front organization, communist infiltrated organization, or communist controlled organization or by any agent of any such organization, which communication or material from any of the above listed sources is

(a) reasonably adopted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any way influence a recipient or any section of the public with reference to the political or public interests, policies or relations of a government of a foreign country or a foreign political party, or promote in the United States or the state of Louisiana, any attitude or state of mind that tends to undermine the determination of any citizen of the United States or of any of the various states to uphold and defend the Constitution of the United States or the constitutions of the respective states, or tends to create or encourage disrespect for duly constituted legal authority, either federal or state, or

(b) which advocates, advises, instigates or promotes any racial, social, political or religious disorder, civil riot, or other conflict involving the use of force or violence in the United States, the state of Louisiana or any other American republic, or the overthrow of any government or political subdivision of the United States, the state of

Appendix A—Statutes Involved

Louisiana or any other American republic by any means involving the use of force or violence.

(2) For the purposes of R.S. 14:390-14:390.8, the fact that an organization has been officially cited or identified by the attorney general of the United States, the subversive activities control board of the United States or any committee of the United States Congress as a communist organization, a communist action organization, a communist front organization or a communist infiltrated organization or has been in any other way officially cited or identified by any of these aforementioned authorities as a communist controlled organization, shall be considered presumptive evidence of the factual status of any such organization. Added Acts 1962, No. 245 Sec. 1.

Sec. 390.2 ACTS PROHIBITED

It shall be a felony for any person to knowingly, willfully and intentionally deliver, distribute, disseminate or store communist propaganda in the state of Louisiana except under the specific exemptions hereinafter provided. Added Acts 1962, No. 345, Sec. 1.

Sec. 390.3 LEGITIMATE PROCUREMENT OF CONTRABAND

Bona fide students of foreign languages, foreign affairs, or foreign political systems, other interested individuals, and also bona fide officially accredited educational institutions may obtain communist propaganda and have the same legally delivered to them within the state of Louisiana upon specifically requesting the delivery of the same for the purpose of personal or institutional use in due course of the educational process. All such communist propaganda legally entering this state under this exemption shall be clearly and legibly labeled on both the front and back cover thereof, or on the front if not covered, with the words

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"Communist Propaganda" printed or stamped conspicuously in red ink, and failure to so label said material shall constitute a violation of R.S. 14:390-14:390.8 on the part of the sender or distributor thereof, the violation to be considered to take place at the point of actual delivery to the ultimate user who requested the material. Added Acts 1962, No. 245, Sec. 1.

Sec. 390.4 VENUE

Violations of R.S. 14:390-14:390.8 are considered to take place at the location where the prohibited contraband material is found, either stored in bulk or placed in the hands of the ultimate user. Added Acts 1962, No. 245, Sec. 1.

Sec. 390.5 WAREHOUSING AND STORAGE

It is the duty of the sheriffs of the respective parishes, upon the finding of any bulk storage of any communist propaganda, to enter upon the premises where the material is found, clear the premises of all human occupants, and padlock the premises until judicially ordered to reopen them. The owner of any padlocked premises may, upon application to the district court of proper jurisdiction and upon showing the court that the premises can be immediately cleared of the prohibited contraband material, obtain an order from the court to the sheriff, authorizing him to supervise the removal of the contraband by the owner of the premises and to re-open the premises thereafter. Added Acts 1962, No. 245, Sec. 1.

Sec. 390.6 DESTRUCTION OF CONTRABAND

All communist propaganda discovered in the state of Louisiana in violation of R.S. 14:390-14:390.8 shall be seized and after proper identification and upon summary

Appendix A—Statutes Involved

order of the district court of proper jurisdiction, destroyed, unless needed for official purposes. Added Acts 1962, No. 245, Sec. 1.

Sec. 390.7 PENALTIES

Any person who violates any of the provisions of R. S. 14:390-14:390.6 shall be fined not more than ten thousand dollars or imprisoned at hard labor for not more than six years, or both. Added Acts 1962, No. 245, Sec. 1.

Sec. 390.8 SHORT TITLE

R.S. 14:390 through 14:390.7 may be cited as the "Communist Propaganda Control Law." Added Acts 1962, No. 245, Sec. 1.

APPENDIX B

Indictments Returned Against Appellants Dombrowski, Smith and Waltzer

Indictment of Benjamin E. Smith

PARISH OF ORLEANS

CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

THE STATE OF LOUISIANA } ss.:

THE GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT That one BENJAMIN E. SMITH late of the Parish of Orleans on the 22nd day of January in the year of our Lord, one thousand, nine hundred sixty-four with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans while knowingly and wilfully being a member of a Communist front organization known as the National Lawyers Guild, which said organization has been cited by committees and sub-committees of the United States Congress as a Communist front organization on March 29, 1944, September 21, 1950 and on April 23, 1956, and while at the same time remaining continuously within the boundaries of the State of Louisiana five consecutive days immediately prior to and on the date of the 22nd day of January 1964, and that during such time he did knowingly and wilfully fail to register with the Department of Public Safety of the State of Louisiana as a member of a Communist front organization on or before the fifth day that he remained continuously in this State, all as required by Louisiana Revised Statutes Title 14, Section 360.

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SECOND COUNT

AND NOW THE GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT THAT one BENJAMIN E. SMITH late of the Parish of Orleans on the 22nd day of January in the year of our Lord, one thousand, nine hundred sixty-four with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans knowingly and wilfully participate in the management, to wit, act as Treasurer of a subversive organization, to wit, the Southern Conference Educational Fund, said organization being essentially the same as the Southern Conference for Human Welfare, which said organization has been cited by committees of the United States Congress as a Communist front organization on March 29, 1944, and June 16, 1947, while knowing the said Southern Conference Educational Fund to be a subversive organization.

THIRD COUNT

AND NOW THE SAID GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of said State, upon their oath, PRESENT That one BENJAMIN E. SMITH late of the Parish of Orleans on the 22nd day of January in the year of our Lord, one thousand, nine hundred sixty-four with force and arms in the Parish of Orleans aforesaid, and with the jurisdiction of the Criminal District Court for the Parish of Orleans while knowingly and wilfully being a member of a Communist front organization known as the Southern Conference Educational Fund, which said organization is essentially the same as the Southern Conference for Human Welfare, which said

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Southern Conference for Human Welfare having been cited by the committees of the United States Congress as a Communist front organization on March 29, 1944, and on June 16, 1947, while at the same time remaining within the boundaries of the State of Louisiana five consecutive days immediately prior to and on the date of the 22nd day of January 1964, and that during such time he did knowingly and willfully fail to register with the Department of Public Safety of the State of Louisiana as a member of a Communist front organization on or before the fifth day that he remained in this State; all as required by Louisiana Revised Statutes, Title 14, Section 360, contrary to the form of Statute of the State of Louisiana in such cases made and provided and against the peace and dignity of the same.

.....
 District Attorney for the
 Parish of Orleans.

Indictment of James A. Dombrowski

PARISH OF ORLEANS

CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS

THE STATE OF LOUISIANA } ss.:

THE GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT That one JAMES A. DOMBROWSKI late of the Parish of Orleans on the 25th day of January in the year of our Lord, one thousand, nine hundred sixty-four

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with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans knowingly and wilfully participate in the management, to wit, act as Executive Director of a subversive organization, to wit, the Southern Conference Educational Fund, said organization being essentially the same as the Southern Conference for Human Welfare, which said organization has been cited by committees of the United States Congress as a Communist front organization on March 29, 1944, and June 16, 1947, while knowing the said Southern Conference Educational Fund to be a subversive organization.

SECOND COUNT

AND NOW THE SAID GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT That one JAMES A. DOMBROWSKI late of the Parish of Orleans on the 25th day of January in the year of our Lord, one thousand, nine hundred sixty-four with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans while knowingly and wilfully being a member of a Communist front organization known as the Southern Conference Educational Fund, which said organization is essentially the same as the Southern Conference for Human Welfare, which said Southern Conference for Human Welfare having been cited by the committees of the United States Congress as a Communist front organization on March 29, 1944, and on June 16, 1947; while at the same time remaining within the boundaries of the State of Louisiana five consecutive days immediately prior to and on the date of the 25th day January 1964, and that during such time he did knowingly and wilfully fail to register with the Department of Public Safety of the State of Louisiana as a mem-

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ber of a Communist front organization on or before the fifth day that he remained in this State, all as required by Louisiana Revised Statutes Title 14, Section 360, contrary to the form of Statute of the State of Louisiana in such cases made and provided and against the peace and dignity of the same.

.....
District Attorney for the
Parish of Orleans.

Indictment of Bruce Waltzer**PARISH OF ORLEANS****CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS**

THE STATE OF LOUISIANA } ss.:

THE GRAND JURORS of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oath, PRESENT That one BRUCE WALTZER late of the Parish of Orleans on the 22nd day of January in the year of our Lord, one thousand, nine hundred sixty-four with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans while knowingly and wilfully being a member of a Communist front organization known as the National Lawyers Guild, which said organization has been cited by committees and sub-committees of the United States Congress as a Communist front organization on March 29, 1944, September 21, 1950 and on April 23, 1956,

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and while at the same time remaining continuously within the boundaries of the State of Louisiana five consecutive days immediately prior to and on the date of the 22nd day of January 1964, and that during such time he did knowingly and wilfully fail to register with the Department of Public Safety of the State of Louisiana as a member of a Communist front organization on or before the fifth day that he remained continuously in this State, all as required by Louisiana Revised Statutes Title 14, Section 360.

MOTION FILED

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SUPREME COURT, U. S.

~~OCT 2 1964~~

IN THE
Supreme Court of the United States

October Term, 1964

No. 52

JAMES A. DOMBROWSKI, et al.,

Appellants,

JAMES H. PFISTER, etc., et al.,

Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

**MOTION FOR LEAVE TO FILE BRIEF AMICUS
CURIAE AND BRIEF AMICUS CURIAE**

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IN THE
Supreme Court of the United States

October Term, 1964

No. 52

JAMES A. DOMBROWSKI, *et al.*,

Appellants,

—v.—

JAMES H. PFISTER, etc., *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

**MOTION FOR LEAVE TO FILE BRIEF
*AMICUS CURIAE***

Petitioner, NAACP Legal Defense and Educational Fund, Inc., respectfully moves this Court for permission to file the attached brief *amicus curiae* for the following reasons:

This case presents the issue of whether the civil rights decisions of this Court and the civil rights legislation enacted by the Congress may be deprived of significance by attacks on their advocates.

According to the record here, the plaintiffs-intervenors are two lawyers practicing in New Orleans; they have been active in civil rights cases, representing Negroes in desegregation cases and other litigation asserting rights conferred by the Constitution.

Acting on a search warrant issued under color of certain Louisiana statutes, city and state police conducted a search

at gun point of the law offices of the plaintiffs-intervenors. The police inspected all of the lawyers' confidential legal files and seized and took away some of them.

The purpose of this search, according to plaintiffs-intervenors, was to destroy their work in the field of civil rights. Anticipating further action under color of the same statutes, plaintiffs-intervenors asked the Court below for injunctive relief and for a declaration that the statutes are unconstitutional on their face and as applied. The requested relief was refused without a hearing.

Thus, according to the decision below, an unconstitutional statute may be used to destroy the work of lawyers engaged in civil rights cases, and the federal courts will withhold relief.

The interest of petitioner NAACP Legal Defense and Educational Fund in any such ruling is, we suggest, manifest. Petitioner is a New York corporation organized for the purpose, among others, of securing equality before the law, without regard to race, for all citizens. For many years, we have been the principal organization regularly supplying the legal services to Negro citizens who claim that they have been denied equal protection of the laws, due process of law and other rights secured by the constitution and laws of the United States. N. Y. Times, June 28, 1964, p. 46, c. 1, 2.

While we have no connection with the plaintiffs-intervenors in this case, and have not worked with them in the past, if the files of our legal staff and our cooperating attorneys may be subjected to the same lawless invasion as is here alleged to have occurred, without relief being available in the federal courts, our activities and, indeed, the cause of civil rights will be most severely prejudiced.

The problem, would perhaps be of lesser consequence were a plethora of advocates available to represent civil rights causes. But the precise opposite is true. According to a survey conducted by the United States Commission on Civil Rights, 1963 Report, 117-9, only a small segment of the Southern bar handles civil rights issues. And from our own experience we know that, until 1961, only one lawyer in Mississippi handled civil rights litigation, and even today there are only three. Only this summer has the Mississippi Bar Association adopted a resolution asserting the duty of its members to appear in civil rights cases.¹ But results from this resolution are yet to be made clear and there is no reason to believe that there will soon be a drastic change.

In part, this dearth of counsel is doubtless due to the social pressures which are brought to bear on advocates of civil rights causes. One-third of the lawyers who reported to the Commission on Civil Rights that they had handled civil rights cases reported also that they had suffered threats of physical violence, loss of clients, or social ostracism as a result. *Ibid.* The Fifth Circuit, in *United States v. Harpole*, 263 F. 2d 71, 82 (1959) noted that lawyers who "fight against the systematic exclusion of Negroes from juries sometimes do so at the risk of personal sacrifice which may extend to loss of practice and social ostracism."

The present case and similar instances demonstrate that the pressures are not merely business or social: in many areas, civil rights advocates face governmental and judicial action which has no parallel in the experience of counsel who do not appear in civil rights causes. Among the more disquieting examples are:

¹ Resolution, Board of Bar Commissioners of the Mississippi State Bar, July 15, 1964.

1. Disbarment proceedings were begun in 1959 against S. W. Tucker, Esq., a Negro member of the Virginia bar, on charges that, in 1950 and 1952, he appeared in three cases at the behest of the NAACP. Only after a year of litigation were the charges dismissed. *Matter of S. W. Tucker*, Circuit Court, Greensville County, Virginia. Feb. 15, 1962. Case filed as "ended Law case #407".

2. Disciplinary proceedings were begun against R. Jess Brown, Esq., a Negro member of the Mississippi bar, on the grounds that, in a school desegregation case, he had appeared for one of 13 plaintiffs without authority and had inserted an unfounded allegation in the complaint. After a hearing which demonstrated that Mr. Brown's appearance was authorized and the allegation was not groundless,² the citation was discharged, but costs were taxed against Mr. Brown on the apparent ground that he had demonstrated his innocence only at the hearing. *In the Matter of R. Jess Brown*, Civ. No. 3382 (S. D. Miss. 1963), appeal pending (5th Cir., No. 21224). Mr. Brown is the Mississippi attorney earlier mentioned who has handled civil rights cases since before 1961. Cf. Harvard Law Record, March 7, 1963, p. 1; N. Y. Times, July 4, 1963, p. 38, c. 1. concerning the disbarment of a white Mississippi attorney who represented Episcopalian ministers involved in the Jackson Freedom Rides.

² The unfounded allegation was that shots had been fired into the home of a named plaintiff. In point of fact, however, shots were fired into a cafe owned by that plaintiff, into the homes of at least six of her neighbors, and into her brother's home. *In the Matter of R. Jess Brown*, Record on Appeal, pp. 96-97, 225-9; Supplemental Record 338, 370.

3. Tobias Simon, Esq., appeared for the Florida Civil Liberties Union in cases involving hundreds of civil rights demonstrators. He has appeared also in this Court in civil rights cases. In a local Tallahassee court, he was charged with contempt for having failed to appear on behalf of a young girl arrested in a civil rights demonstration. Following the efforts of his counsel, Florida's former governor, Fuller Warren, Esq., the charges were ultimately dismissed. *City of Tallahassee v. Patricia Due*, No. 18863—Chancery, Cir. Ct., Tallahassee, Fla.

4. Howard Moore, Jr. and Donald L. Hollowell, of the Georgia bar, were recently ordered to show cause why they should not be held in contempt of court because of a motion which they filed to recuse Judge Durwood T. Pye on the grounds of bias and prejudice. The contempt citation followed the denial of the motion by Judge Pye, who described the very presentation of the motion as an insult to the court. The hearing on the order to show cause has been continued. Cf. *Ashton Bryan Jones v. State of Georgia*, No. 506, October Term, 1964, see certified transcript, pp. 45-84.

5. Charles Morgan, Jr., a successful practicing Birmingham attorney, was forced to leave Alabama after speaking out against the bombing of a Negro church where four Negro Sunday School children were killed. His experience is detailed in: *A Time to Speak* (Harper & Row, New York, N. Y., 1964).

Among actions taken against civil rights organizations operating in the courts, see *NAACP v. Button*, 371 U. S. 415 (1963); *NAACP v. Committee on Offenses Against Administration of Justice*, 201 Va. 890, 114 S. E. 2d 721 (1963); *Texas v. NAACP*, District Court No. 56-649, 7th Judicial District, Smith County, Texas, May 8, 1957; *Arkansas ex rel. Bennett v. NAACP Legal Defense Fund*,

No. 44679 (Cir. Ct., Pulaski County); *Arkansas ex rel. Bennett v. NAACP Legal Defense Fund*, No. 45183 (Cir. Ct., Pulaski County); *NAACP Legal Defense Fund v. Gray*, Civ. No. 2436 (E. D. Va.).

The courts can, of course, do little about the social and economic pressures which operate against counsel in civil rights matters. All the more reason then, we respectfully suggest, for speedy judicial intervention in behalf of those counsel who suffer from official action.

Because of the broad significance of this case, which may not adequately appear in argument on behalf of the parties, we respectfully submit that the views of petitioner may be of interest to the Court.

We have asked permission of the parties to file this brief *amicus curiae*; counsel for appellees refused.

WHEREFORE petitioner prays that the attached brief *amicus curiae* be permitted to be filed with this Court.

Respectfully submitted,

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IN THE
Supreme Court of the United States

October Term, 1964

No. 52

JAMES A. DOMBROWSKI, *et al.*,

Appellants,

—v.—

JAMES H. PFISTER, *etc., et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BRIEF AMICUS CURIAE

This brief speaks only to the question whether the doctrine which *Douglas v. Jeannette*, 319 U. S. 157 (1943), broadly and unnecessarily¹ announced should now be disapproved. The jurisdiction, in a strict sense, of the three-judge federal district court below to enjoin the enforcement of state criminal statutes found, on their face or as administered, to violate the Fourteenth Amendment civil rights of the plaintiffs is clear beyond cavil,² and the in-

¹ *Douglas v. Jeannette* might have been disposed of simply on the ground put forth in 319 U. S. at 165, that the ordinance sought to be enjoined was that very day declared unconstitutional in *Murdock v. Pennsylvania*, 319 U. S. 105 (1943), and nothing in the record suggested that the threat of its enforcement endured a decision of the Supreme Court striking it down.

² The *Jeannette* case itself so says, 319 U. S. at 162; and see *Bush v. Orleans Parish School Board*, 194 F. Supp. 182 (E. D. La. 1961) (3-judge court), *aff'd per curiam*, 368 U. S. 11 (1961); *Browder v. Gayle*, 142 F. Supp. 707 (M. D. Ala. 1956) (3-judge court), *aff'd per curiam*, 352 U. S. 903 (1956).

applicability of the statutory bar of 28 U. S. C. § 2283 (1958) evident.³ Nevertheless, language in *Jeannette* does support the refusal of a federal court to enjoin prosecution under even a state statute which infringes the "supremely precious"⁴ freedoms of the First Amendment, and the relegation of those freedoms to the "remedy" of state prosecution and appeal.⁵ It is the contention of this *amicus* that such refusal is impermissible, and that federal equity should entertain injunctive challenges to state criminal statutes claimed invalid under the First and Fourteenth Amendments, quite without regard to whether a plaintiff undertakes (as the present plaintiffs did) the onerous evidentiary burden of showing that defendant state officials are conspiring to deprive the plaintiff of his federal constitutional rights.

Amicus recognizes at the outset that this issue is not easily resolved. There are weighty justifications for this Court's reluctance, manifest in several forms, to permit the federal courts' involvement in state criminal prosecutions until those prosecutions have finally come to rest in the state courts. Abstention pending state court litigation avoids potentially unnecessary federal constitutional decision, acknowledges state legitimate concern for the expeditious administration of state criminal law, and declines to

³ See Judge Wisdom's dissenting opinion below.

⁴ *N. A. A. C. P. v. Button*, 371 U. S. 415, 433 (1963). Cf. *Palko v. Connecticut*, 302 U. S. 319, 326-327 (1937); *Marsh v. Alabama*, 326 U. S. 501, 509 (1946), and authorities cited; *New York Times Co. v. Sullivan*, 376 U. S. 254, 269-270 (1964), and authorities cited.

⁵ Of course, even the language of *Jeannette* does not support the result below. The premise of *Jeannette* is that "No person is immune from prosecution in good faith for his alleged criminal acts." 319 U. S. at 163. Plaintiffs here allege bad faith prosecution. This *amicus* does not press the issue of bad faith, however; bad faith being a virtually impossible matter to prove in many cases where in fact it exists, the *amicus* seeks a broader ground of federal equity.

make available collateral sniping devices susceptible of abuse to disrupt orderly state court proceedings. Cf. *Virginia v. Rives*, 100 U. S. 313 (1879) (limiting civil rights removal statute to exclude cases where removal is sought by reason of speculative claims of federal constitutional violation at future state trial); *Ex parte Royall*, 117 U. S. 254 (1886) (authorizing discretionary denial of federal habeas corpus to try in advance of state criminal trial issues fairly triable in the state prosecution); *Stefanelli v. Minard*, 342 U. S. 117 (1951), and *Cleary v. Bolger*, 371 U. S. 392 (1963) (disallowing federal suppression of evidence to be offered at state criminal trial). As the cited cases reflect, the seriousness of potential disruption of state processes by federal court anticipatory action is greatest where—unlike the present case—state prosecutions have once been begun and are actually underway. And, of course, none of the doctrines of federal judicial abstention are so steel-clad as not to admit of exceptions where particularly sensitive federal interests are implicated. See, e.g., the exception to *Royall* recognized in *In re Neagle*, 135 U. S. 1 (1890); *In re Loney*, 134 U. S. 372 (1890); *Hunter v. Wood*, 209 U. S. 205 (1908); the exception to *Stefanelli* recognized in *Rea v. United States*, 350 U. S. 214 (1956); cf. *Baggett v. Bullitt*, 377 U. S. 360 (1964), *infra*.

Weighing against the considerations which favor federal abstention where the state criminal process touches federally protected freedoms of expression are certain hard realities. Consider the consequences of a federal district court's refusal, on *Jeannette* grounds, to enjoin a state statute which criminally punishes First Amendment protected conduct:

(1) Persons exercising First Amendment freedoms will be arrested for prosecution. The arrests may cost them their jobs or such benefits as unemployment compensation.

See, e.g., *Baines v. Danville*, 4th Cir., Nos. 9080-9084, 9149-9150, 9212, decided August 10, 1964. In order to obtain their release from jail pending trial, they will have to make bail in amounts and forms which the reporters of BAIL IN THE UNITED STATES: 1964, A REPORT TO THE NATIONAL CONFERENCE ON BAIL AND CRIMINAL JUSTICE (May 27-29, 1964) found are frequently set in civil rights cases "as punishment or to deter continued [civil rights activity]. . . ." *Id.* at 53. Professional bonds will often be the only practicable way to make bail; once paid, the premiums are irrecoverably lost to the defendants, whatever the outcome of the prosecution.

(2) The cases will come to criminal trial in a state court. As this Court knows, see e.g., *Edwards v. South Carolina*, 372 U. S. 229 (1963); *Fields v. South Carolina*, 375 U. S. 44 (1963), statutes repressive of free expression lend themselves to mass prosecutions, mass trials. The burden of conducting a defense in such trials is indescribable. Apart from the obvious problem that legal manpower willing to undertake the defense is least available in areas where it is most needed, see *N. A. A. C. P. v. Button*, 371 U. S. 415, 443 (1963); *Lefton v. Hattiesburg*, 333 F. 2d 280, 286 (1964), the protection of an individual defendant's interests in such trials is next to impossible. Following trial and conviction, state appeals will be taken. Appeal or appearance bonds will be required, unless *forma pauperis* procedure is employed. Realistically, *forma pauperis* procedure is that in name only, for the cost in fees and time of securing the required notarized pauper's oaths for several hundred defendants is itself considerable.

(3) The defendants will attempt to preserve their federal claims as they run the gauntlet of state appellate procedure. Some will succeed, with assistance from this Court,

e.g., *Wright v. Georgia*, 373 U. S. 284 (1963); *Barr v. Columbia*, 378 U. S. 146 (1964). Others will fail, e.g., *Arceneaux v. Louisiana*, 376 U. S. 336 (1964); *Dresner v. Tallahassee*, 375 U. S. 136 (1963); — U. S. —, 84 S. Ct. 1895 (1964).

(4) Those who preserve their federal claims on the merits will ask this Court to review their convictions on records in which all testimonial conflicts have been resolved by state judges or juries. Unfavorable findings of fact will lose federal constitutional rights. E.g., *Feiner v. New York*, 340 U. S. 315 (1951).

(5) With so many vicissitudes and contingencies of litigation standing as potential obstacles to the ultimate vindication of their federal claims, many persons will simply forego the exercise of their constitutional rights of free expression rather than run the risk of prosecution. See *N. A. A. C. P. v. Button*, 371 U. S. 415, 432-438 (1963); *Baggett v. Bullitt*, 377 U. S. 360, 375-379 (1964). And this repression of free expression will be unequal in its effect, for the discretion of the prosecuting agencies and the expectable hostility of state courts and juries will weigh with particular force upon the proponents of unpopular causes.

These being the facts which this Court's own experience has exposed, does the doctrine of *Douglas v. Jeannette*, remitting to state prosecution plaintiffs who invoke the federal civil rights injunctive jurisdiction given by 28 U. S. C. § 1343 (1958) and Rev. Stat. § 1979, 42 U. S. C. § 1983 (1958) to challenge state criminal statutes under the First and Fourteenth Amendments, strike a balance consistent with the appropriate relations between state and national courts? The question is in the first instance one of construction of the jurisdictional statutes, for (subject to constitutional restrictions not arguably involved here) Con-

gress is given by the Constitution the primary responsibility in designing the shape of our federalism—particularly as regards the effect of the Fourteenth Amendment, U. S. CONST., AMEND. XIV, § 5—and in defining the rôle of the federal courts in effectuating its goals, U. S. CONST., ART. III, § 1.

The plaintiffs here seek relief under statutes originating in the first section of the Ku Klux Act of April 20, 1871, ch. 22, 17 Stat. 13, an enactment which this Court has found was intended "to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies." *Monroe v. Pape*, 365 U. S. 167, 180 (1961). In addition to the 1871 legislative background carefully canvassed in *Monroe v. Pape*, the larger sweep of history is instructive. During three quarters of a century following the First Judiciary Act of September 24, 1789, ch. 20, 1 Stat. 73, Congress acted substantially on the principle "that private litigants must look to the state tribunals in the first instance for vindication of federal claims, subject to limited review by the United States Supreme Court." HART & WECHSLER, *THE FEDERAL COURTS AND THE FEDERAL SYSTEM* 727 (1954). It was not then supposed that the necessary and proper place for the trial litigation of all issues of federal law was in the lower federal courts, and no general federal question jurisdiction was given those courts.⁶ Particularly were the lower federal courts excluded from involvement in the state crim-

⁶ Save in the federalist Act of February 13, 1801, ch. 4, § 11, 2 Stat. 89, 92, repealed by the Act of March 8, 1802, ch. 8, 2 Stat. 132.

inal process,⁷ although from time to time limited incursions were authorized in classes of cases where there was more than ordinary reason to distrust the state judicial institutions.⁸ With the advent of the Civil War, Congress multiplied the incursions,⁹ and subsequently the Reconstruction commanders, familiar with the temper of the state courts, withdrew from those courts civil and criminal jurisdiction over cases involving Union soldiers and freedmen, and gave the jurisdiction to national military tribunals.¹⁰

⁷ See particularly § 14 of the Judiciary Act of September 24, 1789, ch. 20, 1 Stat. 73, 81-82, excepting state prisoners from the federal habeas corpus jurisdiction.

⁸ In the face of New England's resistance to the War of 1812, see 1 MORISON & COMMAGER, GROWTH OF THE AMERICAN REPUBLIC 426-429 (4th ed. 1950), federal removal jurisdiction was extended to civil and criminal cases involving federal customs officials in 1815. Act of February 4, 1815, ch. 31, § 8, 3 Stat. 195, 198; Act of March 3, 1815, ch. 43, § 6, 3 Stat. 231, 233. South Carolina's resistance to the tariff in 1833, see 1 MORISON & COMMAGER, *supra*, 475-485, evoked the Force Act of March 2, 1833, ch. 57, §§ 3, 7, 4 Stat. 632, 633, 634, creating civil and criminal removal jurisdiction for cases involving federal revenue officers and habeas corpus jurisdiction to discharge all persons confined for acts done under federal authority. McLeod's case (*People v. McLeod*, 25 Wend. 482 (Sup. Ct. N. Y. 1841)) gave rise to the habeas corpus extension of the Act of August 29, 1842, ch. 257, 5 Stat. 539. See *In re Neagle*, 135 U. S. 1, 71-72 (1890).

⁹ The removal provisions of the 1833 act, note 8 *supra* were extended to cover cases involving internal revenue collection. Act of March 7, 1864, ch. 20, § 9, 13 Stat. 14, 17; Act of June 30, 1864, ch. 173, § 50, 13 Stat. 223, 241; Act of July 13, 1866, ch. 184, §§ 67-68, 14 Stat. 98, 171, 172. Further, the Act of March 3, 1863, ch. 81, § 5, 12 Stat. 755, 756, authorized removal of civil and criminal cases brought in the state courts against persons for acts done during the rebellion under color of authority derived from presidential order or act of Congress. Procedures under the 1863 act were improved by the Act of May 11, 1866, ch. 80, 14 Stat. 46, and the Act of February 5, 1867, ch. 27, 14 Stat. 385.

¹⁰ See Cong. Globe, 39th Cong., 1st Sess. 1834 (4/7/66); DUNNING, ESSAYS ON THE CIVIL WAR AND RECONSTRUCTION 147, 156-163 (1898).

The War radically altered the view which the national legislature had previously taken, that generally the state legislatures, courts and executive officials were the sufficient protectors of the rights of the American people. The Thirteenth, Fourteenth and Fifteenth Amendments wrote into the Constitution broad new guarantees of liberty and equality in which the federal government committed itself to protect the individual against the States. The four major civil rights acts undertook to elaborate and effectively establish the new liberties and, significantly, each of the acts contained jurisdictional provisions making the federal courts the front line of federal protection.¹¹ No longer was it assumed that the state courts were the normal place for the enforcement of federal law save in the rare and narrow cases where they affirmatively demonstrated themselves unfit or unfair. Now the federal courts were seen as the needed organs, the ordinary and natural agencies, for the administration of federal rights. FRANKFURTER & LANDIS, *THE BUSINESS OF THE SUPREME COURT* 64-65 (1928). This is apparent in the enactment of the Act of February 5, 1867, ch. 28, 14 Stat. 385, the federal habeas corpus statute now found in 28 U. S. C. § 2241(c)(3) (1958), which assured that every state criminal defendant having a federal defensive claim would have a federal trial forum for the litigation of the facts underlying that claim. See *Brown v. Allen*, 344 U. S. 443 (1953); *Fay v. Noia*, 372 U. S. 391 (1963); *Townsend v. Sain*, 372 U. S. 293 (1963). It is apparent in the Judiciary Act of March 3, 1875, ch. 137, 18 Stat. 470, which created general federal question jurisdiction in original and removed civil actions and thus wrote permanently into national law the provision of a federal

¹¹ Act of April 9, 1866, ch. 31, § 3, 14 Stat. 27; Act of May 31, 1870, ch. 114, §§ 8, 18, 16 Stat. 140, 142, 144; Act of April 20, 1871, ch. 22, § 1, 17 Stat. 13; Act of March 1, 1875, ch. 114, § 3, 18 Stat. 335, 336.

trial court for every civil litigant engaged in a significant controversy based on a claim arising under the federal Constitution and laws. See 28 U. S. C. §§ 1331, 1441 (1958). Particularly, in view of the Reconstruction Congress' overriding concern for the effective enforcement of civil rights, it is manifest in the supervening federal trial jurisdiction created by § 1 of the Ku Klux Act of 1871, now Rev. Stat. § 1979, 42 U. S. C. § 1983 (1958), and 28 U. S. C. § 1343 (1958). *Monroe v. Pape*, 365 U. S. 167 (1961), *supra*; *McNeese v. Board of Education*, 373 U. S. 668 (1963). "There Congress has declared the historic judgment that within this precious area, often calling for a trial by jury, there is to be no slightest risk of nullification by state process. The danger is unhappily not past. It would be moving in the wrong direction to reduce the jurisdiction in this field—not because the interest of the state is smaller in such cases, but because its interest is outweighed by other factors of the highest national concern." *Wechsler, Federal Jurisdiction and the Revision of the Judicial Code*, 13 LAW & CONTEMP. PROB. 216, 230 (1948).

Seen against this background, it respectfully is submitted, the broad language of *Douglas v. Jeannette* errs in two fundamental aspects. First, it fails to give due regard to the Congressional judgment of importance of federal judicial protection of federal civil rights under the pattern of federalism which emerged from the post-war amendments and enforcing legislation. Second, it ignores the large shift in congressional temper which caused the Reconstruction Congress—framers of the federal civil rights jurisdiction—to see the federal courts, not the state courts, as the generally fitting forum for the litigation of questions of federal law; and it thereby overlooks the inconsistency with congressional purpose of remitting to the state courts litigants for whose particular protection from the state courts federal trial jurisdiction was created. This

is not to deny the legitimacy of *Jeannette's* concern for the state interest in state criminal law administration. The problem is to weigh that interest appropriately. Where a state statute is challenged on its face under the First and Fourteenth Amendments—where a sustainable claim is made that the statute in any and every instance and application violates freedom of expression—a State's interest in that statute's undisturbed administration seems hardly to preponderate over the prejudice to federal freedoms of their suppression during "an undue length of time" required for their vindication in the hazards and delays of state criminal litigation. *Baggett v. Bullitt*, 377 U. S. 360, 379 (1964). And where the statute is attacked as applied—where its application to a particular set of facts is claimed to infringe First-Fourteenth Amendment rights—it is all the more important that the trier of the facts be a federal trier. Holding last Term that a federal-question plaintiff remitted to state court civil proceedings under the abstention doctrine was entitled to return for federal trial of issues of fact at the conclusion of the state proceeding, this Court said:

"Limiting the litigant to review here [the Supreme Court] would deny him the benefit of a federal trial court's role in constructing a record and making fact findings. How the facts are found will often dictate the decision of federal claims. 'It is the typical, not the rare, case in which constitutional claims turn upon the resolution of contested factual issues.' *Townsend v. Sain*, 372 U. S. 293, 312. 'There is always in litigation a margin of error, representing error in fact finding. . . . ' *Speiser v. Randall*, 357 U. S. 513, 525. . . . The possibility of appellate review by this Court of a state court determination may not be substituted, against a party's wishes, for his right to litigate his federal claims fully in the federal courts." *England v. Louisi-*

ana State Board of Medical Examiners, 375 U. S. 411, 416-417 (1964).

The *Jeannette* doctrine, of course, does precisely what *England* says may not be done: in a case admittedly within congressionally given federal trial jurisdiction, it refuses to hear the plaintiff and sends him into a state criminal trial from which there is no federal trial return.¹² This it does notwithstanding, in cases touching First Amendment liberties, the delays and dangers of state criminal trial may appear to him so costly that suppression is the better part of valor.

Amicus urges the Court to restrict *Jeannette* to its facts and, reversing the judgment below, make clear the obligation of the federal district courts to enjoin enforcement of state criminal statutes which on their face or in their threatened application violate federal freedoms of expression. Such a mandate to the district courts is a matter of urgent necessity. It is no hyperbole to say that the critical issues of human liberty in this country today are not issues of rights, but of remedies. The American citizen has had a right to a desegregated school since 1954 and to a desegregated jury since 1879, but schools and juries throughout vast areas of the country remain segregated. The American citizen has a right of free expression, but he may be arrested, jailed, fined under the guise of bail and put to every risk and rancor of the criminal process if he expresses himself unpopularly. The "right" is there on paper; what is

¹² Except via the post-conviction habeas corpus route, with its inevitable delay, and subject to the discretion of the federal district judge to deny the habeas petitioner an independent federal trial of the facts under *Townsend v. Sain*, 372 U. S. 293 (1963). In cases where First Amendment attack is made upon the criminal statute on which the prosecution or threatened prosecution is based, anticipatory federal injunction no more intrudes into state criminal administration than post-conviction federal habeas corpus: the only significant difference is that the first remedy is timely and effective, while the latter is not.

needed is the machinery to make the paper right a practical protection. Congress created some part of that machinery in the federal injunctive jurisdiction given in 1871. There remains to make the machine work. If it does not, it is merely delusive to suppose that the "basic guarantees of our Constitution are warrants for the here and now" *Watson v. Memphis*, 373 U. S. 526, 533 (1963).

CONCLUSION

As set forth in the above Motion for leave to file this brief *amicus curiae*, the decision of the court below subjects lawyers engaged in civil rights cases to prosecution under unconstitutional statutes with clearly predictable harm to both the attorneys and those whom they are attempting to help. It is submitted that the doctrine of *Douglas v. Jeannette* is inapplicable and that federal courts have both jurisdiction to hear this case and ample statutory authority to grant the relief to which appellants are entitled, and which all such attorneys must have to continue representing persons seeking vindication of constitutional rights in the courts.

Respectfully submitted,

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SUPREME COURT

Supreme Court of the United States

OCTOBER TERM, 1964

No. 52

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE
EDUCATIONAL FUND, INC.,

Plaintiffs-Appellants,

BENJAMIN E. SMITH and BRUCE WALTZER,

Intervenors-Appellants,

against

JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, RUSSELL R. WILLIE, individually and as Major of the Louisiana State Police Department, JIMMIE H. DAVIS, individually and as Governor of the State of Louisiana, JACK P. F. GREMILLION, individually and as Attorney General of the State of Louisiana, COLONEL THOMAS D. BURBANK, individually and as Commanding Officer of the Division of Louisiana State Police, and JIM GARRISON, individually and as District Attorney for the Parish of Orleans, State of Louisiana,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

MOTION FOR LEAVE TO FILE AND BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION AND THE LOUISIANA CIVIL LIBERTIES UNION, *AMICI CURIAE*

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Supreme Court of the United States

OCTOBER TERM, 1964.

No. 52

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE
EDUCATIONAL FUND, INC.,

Plaintiffs-Appellants,

BENJAMIN E. SMITH and BRUCE WALTZER,

Intervenors-Appellants,

against

JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature; RUSSELL R. WILLIE, individually and as Major of the Louisiana State Police Department, JIMMIE H. DAVIS, individually and as Governor of the State of Louisiana, JACK P. F. GREMILLION, individually and as Attorney General of the State of Louisiana, COLONEL THOMAS D. BURBANK, individually and as Commanding Officer of the Division of Louisiana State Police, and JIM GARRISON, individually and as District Attorney for the Parish of Orleans, State of Louisiana,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

MOTION OF AMERICAN CIVIL LIBERTIES UNION AND LOUISIANA CIVIL LIBERTIES UNION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

The American Civil Liberties Union and its affiliate, The Louisiana Civil Liberties Union, respectfully move for leave to file a brief as *amici curiae* in support of the appellants in this case. The attorneys for appellants and for appellee Garrison have consented. Hon. Jack P. F. Gremillion, Attorney General of Louisiana as well as the attorney for appellee Pfister have refused consent. The consents and refusals have been filed with the Clerk of the Court.

Our interest is prompted not only by the fact that appellant Smith is Chairman, and appellant Waltzer a member, of The Legal Panel of The Louisiana Civil Liberties Union. More importantly, the interest of *amici* in this case arises from its important bearing on a principal civil liberties issue of the present day: Whether Federal rights and privileges, created to clear away the vestiges of chattel slavery, are to be rendered meaningful by the Federal courts; or whether they are to be smothered in the name of state sovereignty.

The resolution of this great issue will determine the primary arena of future racial controversy. If the value of legal rights remains undepreciated, the century-old effort to gain redress of Negro grievances can be expected to continue in judicial and legislative channels, including those political processes which can ordinarily be expected to bring about repeal of undesirable legislation. If legal rights prove to be empty things, then despairing resort to extra-legal measures will be the bitter alternative.

Respectfully submitted,

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September, 1964

Supreme Court of the United States

OCTOBER TERM, 1964

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Major of the Louisiana State Police Department, JIMMIE H.
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BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION AND THE LOUISIANA CIVIL LIBERTIES UNION, *AMICI CURIAE*

Opinions Below

The opinions of the three-judge United States District
Court for the Eastern District of Louisiana are reported
at 227 F. Supp. 556.

Statutes Involved

The statutes involved are Louisiana Revised Statutes, Title 14, Sections 358 through 388, which include the Louisiana "Subversive Activities and Communist Control Law," and Louisiana Revised Statutes, Title 14, Sections 390 through 390.5, the Louisiana "Communist Propaganda Control Law."

Statement of the Case

On October 4, 1963, appellants Smith, Waltzer, and Dombrowski were arrested in New Orleans on warrants charging violation of the Louisiana anti-subversion laws. The dissenting opinion below sets out the facts surrounding the arrests (R. 92):

"At gunpoint their homes and offices were raided and ransacked by police officers and trustees from the House of Detention acting under direct supervision of the staff director and the counsel for the State Un-American Activities Committee. The home and office of the director of the Southern Conference Educational Fund were also raided. Among the dangerous articles removed were Thoreau's Journal. A truckload of files, membership lists, subscription lists to SCEF's newspaper, correspondence, and records were removed from SCEF's office, destroying its capacity to function. At the time of the arrests, Mr. Pfister, Chairman of the Committee, announced to the press that the raids and arrests resulted from 'racial agitation'. An able, experienced, and independent-minded district judge of the Criminal District Court, for the Parish of Orleans, after hearing evidence, discharged the plaintiffs from arrest on grounds that the arrest warrants were improvidently issued and that there was no reasonable cause for the arrests."

Notwithstanding their discharge, appellee Pfister publicly demanded enforcement of the anti-subversion laws against appellants. Consequently, they filed a complaint in the federal district court on November 12, 1963 to enjoin enforcement of the Louisiana statutes and to obtain a declaration of their unconstitutionality. Thereafter, a grand jury was convened in New Orleans Parish to consider indictments against appellants, but Judge Minor Wisdom of the Fifth Circuit Court of Appeals ordered prosecutive action restrained until the federal cause was determined by the three judge court.

The complaint charged and the appellants sought to prove by affidavits and in a written offer of proof that the threatened enforcement of these state laws was in every respect an attempt to enforce Louisiana's policy of racial segregation. The appellants asserted and offered to prove that the arrests, the raids, the seizure of books, files, and membership lists, and the threatened imprisonment of the appellants, were a conscious effort to frighten, intimidate and deter the appellants and thousands upon thousands of Negro citizens of Louisiana and those white citizens courageous enough to support them from challenging the denial by the state of equality under the law to its Negro citizens.

A majority of the court below dismissed the complaint on the ground that it failed to state a cause of action, and vacated Judge Wisdom's restraining order.

Subsequently, appellant Dombrowski was indicted under Rev. Stat., Title 14, §360, for failing to register as a member of, and for participating in the management of the Southern Conference Educational Fund, allegedly a "communist-front" organization. Appellant Smith was indicted on similar charges, and also for failing to register as a member of the National Lawyers Guild, allegedly a "communist-front." Appellant Waltzer was indicted for failing to register as a member of the National Lawyers Guild.

ARGUMENT

I.

The questioned Louisiana statutes are invalid.

The Louisiana Subversive Activities and Communist Control Law (La. Rev. Stat. 14:358 through 14:388) and Communist Propaganda Control Law (La. Rev. Stat. 14:390 through 14:390.5) are plainly invalid, on their face and as applied to appellants.

On their face, these statutes constitute forbidden invasions of the rights of speech, press, peaceable assembly and associational privacy. They provide for registration and public identification of the members of any organization "cited" by a Congressional committee or subcommittee as a Communist or Communist-connected organization. They punish, as a felony, knowing membership in "subversive" and "foreign subversive" organizations, which are defined in terms so vague and sweeping as to give a jury *carte blanche* in applying them to unpopular groups. They disqualify for public office all members of such organizations, regardless of *scienter*. They penalize the possession or distribution of writings prepared by any organization subject to registration, which are "reasonably adopted [*sic*] to * * * promote * * * any attitude * * * that tends to * * * encourage disrespect for duly constituted legal authority, either federal or state, or * * * promotes any racial, social, political or religious disorder."

For reasons well stated by Judge Minor Wisdom, dissenting in the court below (R. 89-92), the statutes are unconstitutional on their face, without regard to their alleged use for suppression of lawful claims for racial justice. Even if they contained separability clauses, which they do not, it would be impossible to carve out any provision not

infected by the pervasive effort at unconstitutional thought control. All we add to Judge Wisdom's opinion is the observation that this Court's decision in *Baggett v. Bullitt*, 377 U. S. 360 (1964), rendered after the present appeal was taken, removes any residual doubt as to the soundness of his conclusion.

A second, and independently sufficient, ground for reversal is that the statutes are invalid in their threatened application to appellants. The case comes up on the pleadings, supplemented by a detailed and circumstantial offer of proof in the nature of a bill of particulars; and for present purposes the factual allegations of appellants must be taken as true. They allege that appellees threaten to prosecute them under the questioned statutes for the sole purpose of deterring them from exercising rights guaranteed by the First and Fourteenth Amendments in their efforts to enforce the equality under the law which is guaranteed by the Thirteenth, Fourteenth and Fifteenth Amendments; and these efforts of appellants are alleged to consist of "attempting through peaceful and non-violent means to achieve the elimination of all forms of racial segregation in the states of the South and the State of Louisiana and to assist and encourage Negro citizens to exercise their rights to register and vote in federal and state elections." (R. 5, 20.)

As this Court well knows, Southern resistance to federal requirements of equality before the law has recently taken a new and menacing form. As Congress and the courts have made ever clearer the availability of equal protection of the laws to those Negroes who claim it, recalcitrant white supremacists have resorted more and more to the technique of discouraging the making of such claims. The modes of action are protean. They range from private reprisal such as boycott and murder, to official harassment. One of the most effective procedures is prosecution for pretended offenses.

From the viewpoint of the would-be nullifiers, such prosecution has many advantages. The cost is borne by the state (out of tax funds partly supplied by the Negroes themselves). And even if there is an acquittal, the defendant is subjected to arrest; may be oppressed by punitive bail requirements; is put to the expense of preparing and presenting his defense; and, at a minimum, is distracted for a considerable time from his pursuit of racial justice. If a hostile jury charged by an elected judge finds him guilty, the burden of appellate litigation (often reaching through several tiers of state tribunals and finally to this Court) multiplies the hardship. And there is always the possibility—known not only to the defendant but to the tens of thousands of onlookers whose intimidation is a primary object of the cruel game—that even a groundless conviction may survive appellate review if defense counsel fails to negotiate the procedural traps which lurk in trial and appellate practice.

This last consideration affords a chilling insight into the special significance of the threat against two of the appellants, Benjamin E. Smith and Bruce C. Waltzer, who are lawyers. One is Chairman, and the other is a member, of the Legal Panel of Louisiana Civil Liberties Union. They do not claim that their professional status immunizes them from criminal prosecution. What they do claim is that, solely *because* of their professional representation of persons claiming equal rights for Negroes, they have been arrested; their homes, automobiles and offices have been searched and their files violated; and they are threatened with indictment.*

*After the present action was commenced, they were in fact indicted. The indictments are public records of which this Court can take judicial notice. We note that they are set forth as Appendix B to the brief of appellants.

This attack on lawyers because of their professional service in aid of the Constitution and laws of the United States is a new and dangerous manifestation. Until now, even the fiercest opponents of Negro rights have not officially questioned the lawyer's duty to represent his client. It is no secret, of course, that private disapproval of lawyers who defend unpopular persons and causes has tended to impoverish such lawyers and has sufficed to keep their numbers disgracefully small.* Indeed, the scarcity of lawyers available for civil rights representations in the Deep South led President Kennedy, on June 21, 1963, to request establishment of the Lawyers' Committee on Equal Justice Under Law, which has endeavored to correct the deficiency. See 49 Amer. Bar Assn. Jour. 785 (1963). But according to the allegations of appellants—which they say they stand ready to prove if permitted—Louisiana now treats a lawyer's civil rights work as felonious conduct.

Nothing stands between the Louisiana authorities (appellees here) and the achievement of their objective, but the federal district court. It will not do to say that the appellants should stand trial in the state court and, if necessary, appeal their convictions here. The damage will have been done. Thousands of precious man-hours and thousands of dollars will have gone down the drain. Not only will these appellants have been diverted from their pursuit of justice for the Negro, but the whole world—including Southerners loyal to the spirit and letter of our Constitution—will be

* See, for example, Rostow, *The Lawyer and His Client*, ABA Journal, January 1962, February 1962; Downs and Goldman, *The Obligation of Lawyers to Represent Unpopular Defendants*, 9 Howard Law Journal 49 (1963); Symposium, *The Right to Counsel and the "Unpopular Cause"*, 20 Univ. of Pitt. Law Rev. 725 (1959); Cheatham, *A Lawyer When Needed* (Columbia Univ. 1963); Sacks, *Defending the Unpopular Client*; National Council on Legal Clinics (Amer. Bar Center, 1961).

forcefully reminded of the price to be paid for faithful devotion to the mandates of Congress and this Court. And, be it remembered, even this Court's reversal of the convictions, and invalidation of the statutes on which they were based, would leave the state free to continue the harassment by additional unfounded prosecution on any charge whatever, from disorderly conduct on up.

These are the grounds on which the appellants have invoked the protection of the district court. It remains to inquire whether that court had legal cause for its refusal to adjudicate them.

II.

The district court erred in denying injunctive relief.

We find ourselves unable to improve on Judge Wisdom's refutation of the reasons advanced by the district court majority for its refusal to decide the merits of the case. His dissenting opinion accurately states the applicable law, with full documentation of his conclusion.

We offer only one additional observation, which Judge Wisdom may have deemed too obvious to require statement. The district court's repeated reference to the state's "right of self-preservation," and its insistence that the state can exempt itself from district court adjudication by simply *declaring* that it is exercising that right (even though the appellants offer to prove that Louisiana's effort is *not* to prevent subversion of *its* laws but to subvert the *federal* law) would, if approved, revitalize the long discredited doctrine of interposition. According to the district court, the state's assertion that its sovereignty is at stake constitutes a nontraversable allegation. If and to the extent that such a declaration is deemed controlling on the federal courts, the Civil War is undone.

Rather than repeat what Judge Wisdom has already said so well, we invite attention to an aspect of the case which goes beyond the narrow though important issue presently before the Court. The majority opinion of the two district judges commands attention for a broader reason: it constitutes an eloquent (though probably unintended) commentary on certain difficulties in the administration of the federal judiciary—difficulties which this Court has power to correct.

In the peroration of their opinion, the district judges say (R. 74-75):

“For the good of all it is to be hoped that this case will reach the Supreme Court so that the matter of State-Federal relations in the judicial field may be clarified. If the federal district judges are to act as a police force to ride herd over state and municipal courts *then we had best be so instructed* and the matter once and for all laid to rest * * *.” (Emphasis added.)

Looking past the acid exaggeration involved in the term “police force,” we see the words of beleaguered men. Theirs is the hard task of enforcing Federal law in a community—their own community—where hate of that law, and of those who impose it, finds myriad tongues. If they are not to be regarded as traitors, and (along with their families) subjected to the ostracism and other reprisals that are visited upon turncoats, they need *to be instructed*. Then can they repel community pressures by saying, if they must, that they are doing only what they are compelled to do. “What the district judges need [in the racial field]—and what most of them want—is not the responsibility for making choices, but rigid mandates that compel them to act.” Peltason, *Fifty-eight Lonely Men*, p. 245 (1961).

Scrutiny of the district court opinion will reveal several points on which clarification by this Court would greatly strengthen the fabric of judicial administration. As we have already said, we think the present case is so clear that a reversal might well be predicated simply on the dissenting opinion below. But it is right for this Court, charged as it is with the duty of improving the efficiency of the whole federal court system, to take cognizance not only of the instant case but of the dozens and hundreds of others that will follow. The public interest requires accurate adjudication at the trial level; appeals should be needed only when the law is truly unclear.

First: We respectfully suggest the need for an explicit statement as to the reach of *Pennsylvania v. Nelson*, 350 U. S. 497 (1956). It would seem clear that the "field" there held to be pre-empted by Congress is the suppression of sedition sponsored by foreign governments—notably the actions of the Communist Party of America. That Party has been held to be bent on overthrow of all our governments, state and local as well as Federal. *Communist Party v. Subversive Activities Control Board*, 367 U. S. 1 (1961). The possibility of conflict between Federal and state action, which the Court in *Nelson* undertook to avoid, exists whenever the state endeavors to punish sedition of this type. The conflict is not avoided or lessened if the state purports to forbid only sedition against itself, and not against the United States, since the investigation and proof would be the same as if sedition against the United States were also forbidden. To the extent (if any) that *Nelson* leaves open the possibility that states may prosecute for sedition directed against themselves, it can only refer to purely local revolutionary activity of the sort involved in *Luther v. Borden*, 7 How. 1 (1849).

We had thought it entirely clear that *Uphaus v. Wyman*, 360 U. S. 72 (1959) did no more than confirm the legality

of state *investigations* of sedition, and that it left *Nelson* undisturbed in so far as state *prosecutions* are concerned. Yet, in the present case, two district judges have held otherwise (R. 71).

Moreover, the line between prosecution and investigation is not as clear as it might be. This Court knows that legislative exposure can be used for purposes of punishment rather than enlightenment, and has condemned the practice. *Watkins v. United States*, 354 U. S. 178 (1957). It would seem that the *Nelson* rule forbids states to punish sedition aimed at overthrow of the federal government (even if it is also directed at state governments), whether such punishment takes the form of prosecution or investigation. That is to say, the logic of the rule would seem applicable to investigations shown to be purely punitive—as would be true, *prima facie* at least, where state legislatures engage in exposure-type investigations on subjects as to which they lack legislative power.

An authoritative statement by this Court demarcating the area covered by the *Nelson* rule would be most helpful to litigants and to the state and lower federal courts.

Second: We respectfully suggest the need for a statement by this Court as to whether *Uphaus v. Wyman* has any vitality as a precedent. We recognize that the invasions of associational privacy by the registration requirements of the Louisiana Subversive Activities and Communist Control Law go far beyond anything upheld in the *Uphaus* case or any other. But, with all respect, we say that *Uphaus* was an unfortunate aberration when it was decided, breaking sharply with this Court's prior decision in *N. A. A. C. P. v. Alabama*, 357 U. S. 449 (1958); that it is inconsistent in principle with later decisions, such as *Bates v. Little Rock*, 361 U. S. 516 (1960) and *Talley v. California*, 362 U. S. 60 (1960), which recognize and repel

assaults on First Amendment freedoms through enforced publicity; that it is wholly indistinguishable from *Gibson v. Florida Legislative Investigation Commission*, 372 U. S. 539 (1963); and that it is a source of continuing mischief in civil rights cases.

The inconsistency between *Uphaus* and other decisions of this Court, both before and since, emboldens us to suggest that *Uphaus* can only be explained on the basis of a misunderstanding by the Court as to the effect of the New Hampshire statute there involved. The statute began with a vague definition of "subversive person," almost identical with the one which this Court held void for vagueness in *Baggett v. Bullitt*, 377 U. S. 360 (1964)* but even more sweeping in its terms. The two definitions are identical except that the Washington definition involved in *Baggett* applied the label of "subversive person" to anyone who belonged to a subversive organization *with knowledge of its subversive character*. This requirement of *scienter* was omitted from the New Hampshire statute involved in *Uphaus*, so that a "subversive person" as there defined might be a wholly innocent member of an organization deemed subversive. The effect was to brand as "subversive persons" a multitude of persons whom there was no reason to regard as actually subversive in any generally understood meaning of the word. The *Uphaus* majority then proceeded to appraise the New Hampshire investigation of these "subversive persons" as though they had really been shown to be subversive persons—*without the quotation marks*. Only on that basis could the New Hampshire investigation have been deemed to pass the test as later formulated in *Gibson* (372 U. S. at 546):

* The respective statutory definitions are quoted at 360 U. S. 78, n. 6 and 377 U. S. 362.

" * * * it is an essential prerequisite to the validity of an investigation which intrudes into the constitutionally protected rights of speech, press, association and petition that the State convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest."

In *Uphaus*, the Court evidently intended to apply the same rule, since it examined the record to see whether the state had established a substantial relationship between the information sought (names of guests at a pacifist camp operated by Dr. Uphaus) and a subject of legitimate state interest (presence of subversive persons within the state). This relationship was held to be present because there was evidence that Dr. Uphaus and nineteen speakers at the camp were "subversive persons" *within the meaning of the artificial statutory definition*. But there was no evidence at all that any of them were actually subversive; and it can hardly be contended that the state has a legitimate interest in learning and publicizing the names of non-subversive persons, simply because the state chooses to *call* them subversive. The "essential prerequisite" to the investigation was therefore wholly lacking.

If *Uphaus* were dead and forgotten, we would not exhumate it simply for purposes of proper burial. But its ghost haunts the civil rights movement. Its very illogic invites its invocation by litigants as a mystic symbol of States' Rights, in the hope that sympathetic courts will find it useful in providing color of respectability to an otherwise indefensible position. In *Gibson*, it served to encourage a destructive legislative investigation that should never have been undertaken. In the present case, it was employed as an antidote for the *Nelson* pre-emption rule. In dozens of cases it has appeared to becloud the issues. Repeatedly it

has drained the resources of civil rights organizations for expenses of appellate litigation needed to correct errors which it has occasioned. This mischievous ghost can be laid only by a candid declaration that *Uphaus* was wrongly decided and is not the law.

To be sure, it has been suggested that existence of state power to violate associational privacy depends on whether the association in question is a "good" or a "bad" one. The district court seems to have been hinting at such a distinction when it declared (R. 73) that one of the questioned Louisiana statutes might well be *unconstitutional* as applied to the N. A. A. C. P. (which it said had been held to be "a valid, lawful, private activity" in *State v. N. A. A. C. P.*, 181 F. Supp. 37 (E. D. La. 1960), *aff'd sub nom. Louisiana v. N. A. A. C. P.*, 366 U. S. 293 (1961)), but *constitutional* as applied to "an invalid, unlawful secret activity" (evidently referring to appellant Southern Conference Educational Fund).

The trouble with such a distinction is that it either involves circular reasoning, or stretches judicial notice beyond all recognized bounds. If World Fellowship, Inc. (the organization involved in *Uphaus*) and Southern Conference Educational Fund (the organization involved in the present case) are "bad" and the N. A. A. C. P. (involved in *Gibson*, *Bates* and *N. A. A. C. P. v. Alabama*) is "good," how does the Court know it? The very purpose of the challenged investigation is usually to find out—or, at least, that is its asserted justification.

Another basis for reconciliation of *Gibson* with *Uphaus* has been advanced by lawyers more cynical than we. They say that the state's power depends on whether the organization to be investigated is suspected of a "red" or a "black" conspiracy—i.e., Communist or Negro. *Gibson*, they say, protects the latter; *Uphaus* leaves the former naked.

We are reluctant to believe that such an explanation reflects the Court's thinking. The First Amendment guarantees of speech, press and assembly are general in scope, and do not appear to contemplate exclusion of any communication or organization whatever, so long as it remains peaceable. But if we are mistaken, and the Court does mean to embrace such a distinction, then it is imperative that a line be drawn with absolute clarity. *Gibson* and the present case illustrate the growing tendency of certain state governments to equate Negro equalitarianism with Communism, and to investigate or "control" civil rights organizations on the basis of subversion charges. If *Uphaus* is to remain on the books, exact and unmistakable criteria should be set forth for use by state and lower federal courts in determining whether *Uphaus* or *Gibson* is to be followed.

Such clarification might lessen the stream of litigation which will otherwise flow to this Court. For reasons already stated, however, we respectfully submit that *clarification* would not get at the basic trouble. *Uphaus* is wrong in principle. Its devastating effects are attested, on the basis of wide judicial experience, by Judge Wisdom in his dissenting opinion below (R. 96):

"*Uphaus*, if I may say so, is of small help in our national efforts against Communism but it offers great prospects for disguising unlawful state action against federally protected rights."

It should be explicitly disapproved.

Third: We respectfully suggest the need for restatement and clarification of the rule of *Douglas v. Jeannette*, 319 U. S. 157 (1943), which declares that federal courts will not enjoin state criminal proceedings, even though such proceedings are claimed to violate federal rights, *except*

where such an injunction is the only feasible means of protecting those rights. The rule is sound, but—as the opinion below well illustrates—the meaning of the exception is not sufficiently understood.

Chief Justice Stone, speaking for the Court in *Douglas v. Jeannette*, took pains to make clear the limitations on the scope of the decision. The plaintiffs, Douglas and others, had sought a federal injunction against a city license tax as applied to the distribution of religious literature. On the same day that *Douglas v. Jeannette* was decided, this Court had held the tax to be invalid under the First and Fourteenth Amendments. *Murdock v. Pennsylvania*, 319 U. S. 105 (1943). In ruling that the injunction sought by Douglas and his co-plaintiffs should be denied, the Court made it very clear that relief was withheld only because there was no reason to doubt that the city would respect and follow the *Murdock* decision, just announced—no reason to suppose that the city would make any further effort to impose the tax on distribution of religious literature. The Chief Justice said (319 U. S. at 164, 165):

“It does not appear from the record that petitioners have been threatened with any injury other than that incidental to every criminal proceeding brought lawfully and in good faith * * *

“There is no allegation here and no proof that respondents would not, nor can we assume that they will not, acquiesce in the decision of this Court holding the challenged ordinance unconstitutional as applied to petitioners.”

There being no allegation or proof that there was a threat of irreparable injury justifying injunctive relief, it was held that though federal jurisdiction existed, there was no cause of action in equity. In the absence of any reason to

anticipate bad-faith efforts to collect the illegal tax, there was no occasion for intervention by the federal district court.

When *Douglas v. Jeannette* was decided, and for some years thereafter, cases were rare in which full protection of federal rights could not be achieved by ultimate review, in this Court, of the final judgments of state courts of last resort. That was because abuse of state criminal process was not widespread; prosecutions were initiated for the purpose of obtaining convictions that would stick, not for the purpose of discouraging the *assertion* of federal rights by harassing their claimants with unfounded charges costing much time and money to defend. The gist of the typical federal claim was that a federal right would be denied by a final state court *judgment*.

The 1960's have brought a new legal phenomenon: prosecutions brought, sometimes on a wholesale basis, with no real expectation of a judicial victory but with every hope of punishing civil rights advocates by imposing crushing litigation burdens upon them. This Court has already reversed a good number of such convictions, involving the 1961 Freedom Riders, and thousands of similar cases are on their way up from Jackson, Danville, Cambridge and a dozen other trouble spots. In such cases the gist of the federal claim is that *the prosecution itself* constitutes a denial of federal right.

That is the claim asserted by appellants in the present case. It falls squarely within the recognized exception to the rule of *Douglas v. Jeannette*. Yet the district court, evidently misunderstanding the meaning of the exception, has misapplied the rule.

We respectfully submit that this Court should make entirely clear the availability of federal injunctive relief

against any state court prosecution which is alleged and proved to have been threatened (*or begun**) as a reprisal for exercise of federal rights.

Fourth: We respectfully suggest the need for reconsideration of the so-called "abstention doctrine," which originated with *Railroad Commission of Texas v. Pullman Co.*, 312 U. S. 496 (1941). There, for the first time, the Court held that district courts should sometimes refrain from exercising jurisdiction which they admittedly possess, because of unclarity of the state law.

Throughout its short life, the abstention doctrine has been a source of unpredictability for lawyers and judges alike—occasioning, indeed, repeated disagreement as to its scope and application among the Justices of this Court—and has injected much harmful delay into the adjudicatory process. In recent years it has been increasingly used by the district courts as a means of deferring or avoiding the distasteful task of enforcing federal law hated by the local community. In the present case, the lower court has given it an application which, if upheld, would virtually destroy the federal question jurisdiction of the district courts. It is time to take stock and consider whether the basic objective of the doctrine cannot be better served by other means.

Let us examine the *Pullman* decision with a view to identifying that objective. The Texas Railroad Commission had issued an order requiring all sleeping car trains to carry a

* As to injunctive relief against state prosecution begun before the federal action is commenced, there is a question whether 28 U. S. C. §2283 forbids federal intervention. It has been held that this statute is inapplicable to cases brought under the Civil Rights Act. *Morrison v. Davis*, 252 F. 2d 102 (C. A. 5, 1958), cert. denied 365 U. S. 968 (1958); *Cooper v. Hutchinson*, 184 F. 2d 119 (C. A. 3, 1950); cf. *United States v. Wood*, 295 F. 2d 772 (C. A. 5, 1961), cert. denied 369 U. S. 850 (1962). This Court has not yet expressly adjudicated the question.

Pullman conductor. The practice, on trains having only one sleeper, had been to carry only a *Pullman porter*. (In Texas at that time, all *Pullman porters* were Negroes and all *Pullman conductors* were white.) The *Pullman Company*, joined by the porters' union as intervening plaintiff, sued in the federal district court to enjoin the Railroad Commission from enforcing the order as beyond the Commission's statutory authority and as violative of the federal due process, equal protection and commerce clauses. The district court held the order invalid on the ground that the powers granted to the Commission by Texas statute did not include authority to make such a regulation; and an injunction was granted. This Court reversed, holding that the injunction should be vacated "pending a determination of proceedings, to be brought with reasonable promptness, in the state court" for an interpretation of the Texas statute. (312 U. S. at pp. 501-502.)

Three arguments can be made in favor of this result, all three of them being based on the proposition that state courts have (and should have) final authority to determine the *meaning* of state statutes:

- (1) It is desirable to avoid unnecessary rulings on constitutional questions. If this Court had proceeded to review the district court decision on the merits, it might have disagreed with the lower court and might have held that the Texas statute *did* authorize the Commission's order. The constitutional validity of the order would then have had to be decided. Had the highest state court thereafter held that the statute did not authorize the order, the constitutional questions would have been decided unnecessarily. (This point is made by Mr. Justice Frankfurter, for the Court, at 312 U. S. 498.)

- (2) Decisional inconsistency is to be avoided. If this Court had proceeded to review the district court decision on the merits, it might have upheld the Commission's order against all objections. Had the highest state court thereafter held (in a case involving another railroad) that the statute did not authorize the order, the state and federal courts would have reached contrary conclusions as to its validity. (This seems to be the thought behind Mr. Justice Frankfurter's comment at 312 U. S. 500: "The reign of law is hardly promoted if an unnecessary ruling of a federal court is thus supplanted by a controlling decision of a state court.")
- (3) The federal court should not take action which will make it impossible for the state courts *ever to rule* on a question of statutory interpretation as to which they have the final authority. The injunction granted by the district court would have precluded any enforcement action by the Commission, so that plaintiff, Southern Railway Co., could never have been brought before a state court on this issue. Any other railroad brought into a state court could have removed the case to the federal district court (jurisdiction being predicated on the federal questions). Thus, the state statute could never have been interpreted by the state courts.

Although none of these arguments lacks weight, only the third seems unanswerable. The avoidance of constitutional issues, however wise, is based on a self-denying rule of practice which might well yield to the parties' right to present resolution of their controversy—a controversy which, by hypothesis, the federal courts have jurisdiction to decide. Consistency as between litigants similarly situated is indeed important; yet it yields to the need for a better

rule of law whenever a precedent is judicially overruled or legislatively repudiated. But the need to keep open an avenue for state court resolution of state law questions cannot be overridden without undermining a bed-rock requirement of federalism. For this Court to say that the state courts have the right to the last word in deciding the meaning of state statutes, and then to prevent them from speaking that word, would be to embrace a fiction.

We have already described the compelling necessity for quick intervention by the federal district courts to prevent the utter evisceration of federal rights in the states of the Deep South. (See pp. 7-10, 19, *supra*.) This necessity was not so clear, perhaps, in 1941 when *Pullman* was decided; but events of the last few years have demonstrated it beyond the possibility of doubt. Repeatedly the district courts have refused to decide cases within their jurisdiction, cases that cried out for decision, and have stood silently by while the civil rights of litigants by the hundred have been ground to bits by plainly unconstitutional state action. See, *e.g.*, *Bailey v. Patterson*, 199 F. Supp. 595 (S. D. Miss. 1961), vacated and remanded 369 U. S. 31 (1962); 206 F. Supp. 67 (S. D. Miss. 1962), reversed in part 323 F. 2d 201 (C. A. 5, 1963). It is of course true, as this Court has more than once had to point out, that abstention is justified only in "exceptional circumstances" (*Meredith v. Winter Haven*, 320 U. S. 228, 234 (1943)), and should not be practiced as a matter of course (*N. A. A. C. P. v. Bennett*, 360 U. S. 471 (1959)). But the beleaguered district courts—usually quoting this Court's statements as to state-federal comity, the delicacy of state-federal relationships, the policy of avoiding constitutional issues, and the desirability of decisional consistency—have avidly seized on the abstention doctrine and have utilized it even in cases where it was plainly inapplicable. In the present case, the district court

has indeed gone so far (for the stated purpose of preserving the federal system) as to withhold adjudication of *federal* questions until the state courts can first pass on them.

The demonstrated susceptibility of the abstention doctrine to misuse, despite all the efforts of this Court to clarify its meaning, justifies inquiry as to whether the first two of the three considerations set forth above—avoidance of constitutional issues and the danger of decisional inconsistency—are not outweighed by the dominating necessity of preventing utter nullification of the federal law. For reasons already stated, we submit that the answer must be in the affirmative.

The question then arises whether the third consideration—the need to preserve state court access to state law questions—can be accommodated by a procedure less destructive of federal authority than abstention has proved itself to be. Again, we offer an affirmative answer.

In the *Pullman* case, the problem could have been solved by issuance of the federal court injunction *with a proviso* that it should not be deemed to prevent the Railroad Commission from seeking state court review in a manner approved by the federal district court. For example, that court could have authorized a single state court prosecution for violation of the order, or the Commission could have been permitted to institute a declaratory judgment proceeding, the district court making provision (by means of a conditional decree) against removal of such proceeding to the federal courts.* Jurisdiction would be retained, to permit modification of the federal judgment in the light of any state court ruling thus obtained. But—and this is the

* For example, the federal injunction judgment could provide that removal proceedings would result in dissolution of the injunction.

key point—the district court would have *proceeded to judgment*, and would have granted the relief it believed to be required by law, without waiting months or years for the state court to act.

As a matter of fact, this was precisely the result that was reached, informally, in *Harrison v. N. A. A. C. P.*, 360 U. S. 167 (1959). The Court directed abstention pending state court interpretation of the five Virginia statutes there involved, but exacted assurances from the Virginia authorities that the appellees would never be proceeded against under the said statutes for any acts done during the full pendency of the litigation. (360 U. S. at p. 179.) The effect was the same as if an injunction had been granted on the terms outlined above. A somewhat similar result was achieved in *Leiter Minerals, Inc. v. United States*, 352 U. S. 220 (1957), where the state court was permitted to construe a pertinent state statute but was forbidden, meanwhile, to disturb the federal plaintiff's possession of certain disputed realty.

A review of the decisions of this Court approving abstention will reveal that every one of them presented the problem of preserving state court access to state law questions, and could well have solved it by a decree similar to that postulated above, without any delay in adjudication. In addition to cases already cited, they are:

Chicago v. Fieldcrest Dairies, 316 U. S. 168 (1942);

Burford v. Sun Oil Co., 319 U. S. 315 (1943);

Spector Motor Service, Inc. v. McLaughlin, 323 U. S. 101 (1944);

American Federation of Labor v. Watson, 327 U. S. 582 (1946);

Stainback v. Mo Hock Ke Lak Po, 336 U. S. 368 (1949) (semble; Territorial Act rather than state statute);

Shipman v. Du Pre, 339 U. S. 321 (1950);

Alabama Public Service Commission v. Southern R. Co., 341 U. S. 341 (1951);

Albertson v. Millard, 345 U. S. 242 (1953);

Government and Civil Employees Organizing Committee, C. I. O. v. Windsor, 353 U. S. 364 (1957);

Meridian v. Southern Bell Tel. and Tel. Co., 358 U. S. 639 (1959);

Louisiana Power and Light Co. v. Thibodaux, 360 U. S. 25 (1959);

N. A. A. C. P. v. Bennett, 360 U. S. 471 (1959).

The reasons which ordinarily militate against reconsideration of previous rulings are present here only in attenuated form, if at all. No rights have vested in reliance upon them. And all substantive issues which they involved were presumably decided the same way—eventually—as if the *procédure* here suggested had been followed.

Moreover, *first principles are at stake*. This is not the first time that the very foundations of effective federal jurisdiction have been assailed in the name of States' Rights. Repelling such an attack in *Cohens v. Virginia*, 19 Wheat. 264, 404 (1821), the whole Court, speaking through Chief Justice Marshall, declared:

"It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as

the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution."

It is pertinent to observe that in 1941, when the abstention doctrine was announced, there was little reason to apprehend that the authority and power of the federal judiciary, so fiercely challenged in Marshall's day, would once again be put in jeopardy. In 1941 it may have been reasonable to regard abstention simply as a refinement of judicial administration which would improve the quality of final decisions without greatly impairing the speed or efficacy of the judicial process. The *Pullman* opinion seems to assume as much. See 312 U. S. at pp. 500-501. But in 1964 it is clear that this expectation has been disappointed. We respectfully suggest that the abstention doctrine should now be explicitly disapproved.

CONCLUSION

The decision below reflects a growing danger that the federal district courts may be going lame. A main purpose of their creation (if, indeed, not the only one) was to enforce the federal law in the face of local hostility. In the present case, as in too many others, this purpose has been frustrated.

We urge that the present status of *Pennsylvania v. Nelson*, *Updegraff v. Wyman* and *Douglas v. Jeannette*, which have given rise to persistent and repeated misunderstand-

ing in the lower courts, be now clarified. And we urge this Court to make clear, beyond any possibility of rational doubt, that it is the duty of the district courts to *decide* cases. To paraphrase the final sentence in Judge Wisdom's dissenting opinion, they should be instructed—and helped—to get on with their work.

Respectfully submitted,

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SUPREME COURT, U. S.

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Supreme Court of the United States

OCTOBER TERM, 1964

No. 52

**JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE
EDUCATION FUND, INC.,**

Appellants.

BENJAMIN E. SMITH and BRUCE WALTZER

Appellants-Intervenors.

Versus

**JAMES H. PFISTER, individually and as Chairman of the Joint
Legislative Committee on Un-American Activities of the
Louisiana Legislature, RUSSELL R. WILLIE, individually
and as Major of the Louisiana State Police Department,
JIMMIE H. DAVIS, individually and as Governor of the
State of Louisiana, JACK P. F. GREMILLION, individually
and as Attorney General of the State of Louisiana, COLONEL
THOMAS D. BURBANK, individually and as Commanding
Officer of the Division of Louisiana State Police, and JIM
GARRISON, individually and as District Attorney for the
Parish of Orleans, State of Louisiana,**

Appellees.

**Brief on Behalf of Jim Garrison, Appellee, on Appeal from
the United States District Court for the
Eastern District of Louisiana, New Orleans Division.**

**JIM GARRISON, DISTRICT ATTORNEY
FOR THE PARISH OF ORLEANS**

**CHARLES R. WARD, FIRST EXECUTIVE
ASSISTANT DISTRICT ATTORNEY FOR
THE PARISH OF ORLEANS**

**LOUISE KORN, ASSISTANT DISTRICT
ATTORNEY FOR THE PARISH OF
ORLEANS**

**JOHN VOLZ, ASSISTANT DISTRICT
ATTORNEY FOR THE PARISH OF
ORLEANS**

**Criminal Courts Building
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New Orleans, Louisiana — 70119**

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1964

NO. 52

**JAMES A. DOMBROWSKI and SOUTHERN
CONFERENCE EDUCATION FUND, INC.,**

Appellants,

BENJAMIN E. SMITH and BRUCE WALTZER

Appellants-Intervenors,

versus

**JAMES H. PFISTER, individually and as Chairman
of the Joint Legislative Committee on Un-American
Activities of the Louisiana Legislature, RUSSELL R.
WILLIE, individually and as Major of the Louisiana
State Police Department, JIMMIE H. DAVIS, individ-
ually and as Governor of the State of Louisiana, JACK
P. F. GREMILLION, individually and as Attorney
General of the State of Louisiana, COLONEL THOM-
AS D. BURBANK, individually and as Commanding
Officer of the Division of Louisiana State Police, and
JIM GARRISON, individually and as District Attorney
for the Parish of Orleans, State of Louisiana.**

Appellees.

**Brief on Behalf of Jim Garrison, Appellee,
on Appeal from the United States District Court
for the Eastern District of Louisiana,
New Orleans Division.**

STATEMENT OF THE CASE

On October 4, 1963 Benjamin E. Smith, Bruce Waltzer and James A. Dombrowski were arrested by state and local police and booked in the First District Police Station in New Orleans with violation of Article 26 (criminal conspiracy), Article 358 et seq. (Subversive Activities and Communist Control Law) and Article 390 et seq. (Communist Propaganda Control Law) of the Louisiana Criminal Code, L.R.S. 14:26, 358 et seq. and 390 et seq.

The three men were that same date paroled by the Honorable J. Bernard Cocke, Judge of Section E of the Criminal District Court for the Parish of Orleans.

Within a few days after their arrest Smith, Waltzer and Dombrowski filed a Petition for a Preliminary Examination in the Criminal District Court for the Parish of Orleans. See Art 154, La. Code Crim. Proc., L. R. S. 15:154. A hearing was promptly set for October 25, 1963. The Preliminary Examination was held on that day and the Honorable J. Bernard Cocke discharged Smith, Waltzer and Dombrowski without date on the ground that the State of Louisiana had established no facts to show that probable cause existed for the arrest of the three men. See proceedings no. 181-975 E on the docket of the Criminal District Court for the Parish of Orleans, Testimony and Notes of Evidence Taken on the Preliminary Examination in the Case of Benjamin E. Smith, Bruce C. Waltzer, and James A. Dombrowski versus the State of Louisiana.

No charges against Smith, Waltzer and Dombrowski were accepted from the police by the Office of the

District Attorney for the Parish of Orleans, and no affidavits against the three men were sworn out in the Clerk's Office of the Criminal District Court for the Parish of Orleans. However, in November of 1963 the three attorneys filed a civil suit in the United States District Court for the Eastern District of Louisiana asking that the Louisiana Subversive Activities and Communist Control Law and the Louisiana Communist Propaganda Control Law be declared unconstitutional, and that an injunction issue restraining James H. Pfister, a Louisiana State Representative and Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, Russell R. Willie, a Major in the Louisiana State Police, Jimmie H. Davis, Governor of Louisiana, Jack P. F. Gremillion, Attorney General of Louisiana, Thomas D. Burbank, Commanding Officer of the Division of Louisiana State Police, and Jim Garrison, District Attorney for the Parish of Orleans, from enforcing the laws in question.

A three-judge United States District Court denied the application for injunction against the Louisiana criminal prosecutions and dismissed the suit. Wisdom, Circuit Judge dissented. *Dombrowski v. Pfister*, 227 F.Supp. 556 (E.D. La. 1964).

On January 25, 1964 the Grand Jury for the Parish of Orleans indicted James A. Dombrowski for failing to register with the Louisiana Department of Public Safety as a member of the Southern Conference Educational Fund, an allegedly communist-front organization, and for participating in the management of an allegedly subversive organization, the Southern Conference Educational Fund. Dombrowski was im-

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mediately released on a \$250 bond, the case was allotted to Section B of the Criminal District Court for the Parish of Orleans, and on February 18, 1964 Dombrowski filed a Motion to Suppress Evidence and a Plea of Res Judicata. On June 12, 1964 the Motion to Suppress and Plea of Res Judicata were maintained by the trial judge in Section B, the Honorable George P. Platt. See proceedings no. 183-459 on the docket of the Criminal District Court for the Parish of Orleans. The State of Louisiana moved for an appeal.

On January 29, 1964 the Grand Jury for the Parish of Orleans indicted Benjamin Smith for failing to register with state authorities as a member of the National Lawyers Guild, for participating in the management of the Southern Conference Educational Fund, and for failing to register as a member of Southern Conference. The case was allotted to Section E of the Criminal District Court for the Parish of Orleans, where it is presently awaiting a decision on a Motion to Quash filed by Smith raising constitutional questions affecting the statutes under which he was charged and the indictment itself. See proceedings no. 183-458 on the docket of the Criminal District Court for the Parish of Orleans.

Bruce Waltzer was indicted by the Grand Jury for the Parish of Orleans on January 29, 1964 for being a member of the National Lawyers Guild, an allegedly communist-front organization. The case was allotted to Section C of the Criminal District Court for the Parish of Orleans, where it is now pending, awaiting pleadings which Waltzer requested time to file. See proceedings no. 183-457 on the docket of the Criminal District Court for the Parish of Orleans.

From the foregoing statement of facts it is abundantly clear that James A. Dombrowski, Benjamin E. Smith and Bruce Waltzer, appellants and appellants-intervenors herein, are being fairly treated in the Louisiana courts. They have at no time been denied bail or a speedy hearing, and the only judgments which the Louisiana courts have rendered in their cases have been in their favor.

It is not an accurate statement of the matter to say that the present civil action in the federal courts was brought before any criminal proceeding was begun in the state courts. The arrest of Smith, Waltzer and Dombrowski on October 4, 1963 by state and local police and the Preliminary Examination granted them on October 25, 1963 in the Criminal District Court for the Parish of Orleans mark the initiation of the Louisiana criminal proceedings, and it was not until November 12, 1963 that the present civil action was filed in the federal district court seeking a declaratory judgment declaring the Louisiana laws in question to be unconstitutional and an injunction restraining the enforcement of those laws — the Louisiana Subversive Activities and Communist Control Law and the Louisiana Communist Propaganda Control Law. Consequently there is a clash of courts, unlike the situation which existed in *Baggett v. Bullitt*, *infra*.

In a spirit of comity and through agreement between the District Attorney for the Parish of Orleans and Messrs. Smith, Waltzer and Dombrowski, all state court proceedings pending against appellant and intervenors have been held in abeyance since this Court noted probable jurisdiction of the instant case on June 15, 1964, awaiting final disposition of the matter by

this Honorable Court. Except for this fact, the three cases involving Smith, Waltzer and Dombrowski in the Louisiana courts would now undoubtedly have reached a definitive judgment, or at least be lodged in the Louisiana Supreme Court on appeal.

ARGUMENT

THE FEDERAL COURTS SHOULD ABSTAIN IN THE PRESENT CASE

1. **Doctrines of Equity and Federal-State Comity Sharply Limit Federal Injunction of State Court Proceedings.**

As this Honorable Court so ably stated in *Spielman Motor Co. v. Dodge*, 295 U.S. 89, 95-96, the general rule is that equity will not interfere to prevent the enforcement of a criminal statute even though unconstitutional; to justify such interference there must be exceptional circumstances and a clear showing that an injunction is necessary in order to afford adequate protection of constitutional rights.

"We have said" this Court announced in *Spielman*, "that it must appear that 'the danger of irreparable loss is both great and immediate'; otherwise, the accused should first set up his defense in the state court, even though the validity of a statute is challenged. There is ample opportunity for ultimate review by this Court of federal questions. *Fenner v. Boykin*, 271 U.S. 240, 243, 244."

In *Watson v. Buck*, 313 U.S. 387, this Court quoted with approval from *Spielman* and affirmed the refusal of a three-judge federal district court to enjoin certain sections of a Florida statute regulating the business of persons holding music copyrights, on the ground, *inter alia*, that the Florida Supreme Court had never yet passed upon the constitutionality of the Florida statutes and that it was "highly desirable that it should have an opportunity to do so."

In *Douglas v. Jeannette*, 319 U.S. 158, a number of Jehovah's Witnesses brought suit in the United States District Court for Western Pennsylvania to restrain threatened criminal prosecution of themselves in the state courts by the City of Jeannette for violation of a city ordinance which prohibited the solicitation of orders for merchandise without first procuring a license from the city authorities and paying a license tax, the basis of the federal suit being the contention, as in the instant case, that the ordinance was an unconstitutional abridgment of free speech. The Witnesses also alleged, as do appellants herein, that their federal suit arose under the Civil Rights Act then in effect. On certiorari this Court held that the Witnesses had failed to establish a cause of action in equity and that consequently they were not entitled to have the state proceedings enjoined. The following language from the decision is pertinent here:

○ "It is a familiar rule that courts of equity do not ordinarily restrain criminal prosecutions. No person is immune from prosecution in good faith for his alleged criminal acts. Its imminence, even though alleged to be in violation of constitutional guaranties, is not a

ground for equity relief since the lawfulness or constitutionality of the statute or ordinance on which the prosecution is based may be determined as readily in the criminal case as in a suit for an injunction. *Davis & Farnum Mfg. Co. v. Los Angeles*, 189 U.S. 207; *Fenner v. Boykin*, 271 U.S. 240. Where the threatened prosecution is by state officers for alleged violations of a state law, the state courts are the final arbiters of its meaning and application, subject only to review by this Court on federal grounds appropriately asserted. Hence the arrest by the federal courts of the processes of the criminal law within the states, and the determination of questions of criminal liability under state law by a federal court of equity, are to be supported only on a showing of danger of irreparable injury 'both great and immediate.' *Spielman Motor Co. v. Dodge*, 295 U.S. 89, 95, and cases cited; *Beal v. Missouri Pacific R. Corp.*, 312 U.S. 45, 49, and cases cited; *Watson v. Buck*, 313 U.S. 387; *Williams v. Miller*, 317 U.S. 599." (Emphasis ours)

2. **The Civil Rights Act Must Be Construed So As to Respect the Proper Balance Between the States and the Federal Government in Law Enforcement.** *Screws v. United States*, 325 U.S. 91, 108.

In *Stefanelli v. Minard*, 342 U.S. 117, petitioners brought a civil suit in the federal district court seeking an injunction against the use, in pending state criminal proceedings against them in New Jersey, of evidence allegedly seized in an unconstitutional

search by state police. For basis to their suit they relied on the Civil Rights Act then in effect, R.S. § 1979, 8 U.S.C. § 43. The federal district court dismissed the suit; the Court of Appeals and this Court affirmed. In the course of its opinion this Court reiterated its conviction that the Civil Rights Act "was not to be used to centralize power so as to upset the federal system", citing *Collins v. Hardyman*, 341 U.S. 651, 658, and continuing thus:

"Discretionary refusal to exercise equitable power under the Act to interfere with State criminal prosecution is one of the devices we have sanctioned for preserving this balance. . . .

"* * *

"The consequences of exercising the equitable power here invoked are not the concern of a merely doctrinaire alertness to protect the proper sphere of the States in enforcing their criminal law. If we were to sanction this intervention, we would expose every State criminal prosecution to insupportable disruption. Every question of procedural due process of law — with its far-flung and undefined range — would invite a flanking movement against the system of State courts by resort to the federal forum, with review if need be to this Court, to determine the issue. Asserted unconstitutionality in the impaneling and selection of the grand and petit juries, in the failure to appoint counsel, in the admission of a confession, in the creation of an unfair trial

atmosphere, in the misconduct of the trial court — all would provide ready opportunities, which conscientious counsel might be bound to employ, to subvert the orderly, effective prosecution of local crime in local courts. To suggest these difficulties is to recognize their solution."

In *Cleary v. Bolger*, 371 U.S. 392, this Court refused to enjoin a state officer from testifying in a New York criminal prosecution and administrative proceeding for revocation of a longshoreman's license, reaffirming the principle that courts of equity traditionally have refused, except in rare instances, to enjoin criminal prosecutions, and quoting from *Stefanelli* with approval.

In the petitions filed in federal district court in the present proceeding appellants maintain that they are being deprived of their civil rights because they are being prosecuted in the Louisiana courts when no basis for their prosecution exists, i.e., merely as a harassment. The simple remedy for this state of facts, if indeed it exists, is for appellants to urge in the Louisiana state courts that they are being denied the Equal Protection of the Laws guaranteed to them by the Fourteenth Amendment to the United States Constitution. See *Yick Wo v. Hopkins*, 118 U.S. 356. Appellants do not claim that they have been threatened with any injury other than that incidental to every criminal proceeding, or that a federal court of equity by withdrawing the determination of the constitutional issues which they have raised, or of their guilt, from the Louisiana courts could afford them any protection which they could not secure by prompt trial

in the state courts. Compare *Hague v. C. I. O.*, 307 U.S. 496 (Local officials broke up meetings of the complainants and in some instances forcibly deported them from the state without trial.).

3. The Circumstances Set Out in Appellants' Petitions Are Not Exceptional and Do Not Amount to Irreparable Injury.

Although the general rule is that a court of equity will not restrain criminal proceedings in order to try the same right that is at issue in the criminal courts, an exception to this rule exists when the prevention of criminal prosecutions under allegedly unconstitutional statutes is essential to the safeguarding of rights of property, and when the circumstances of the case are exceptional and the danger of irreparable loss is both great and immediate. See *Cline v. Frink Dairy Co.*, 274 U.S. 445, 451-452, and authorities there cited.

As was pointed out above, the only "exceptional circumstances" or "danger of irreparable loss" which is alleged by appellants in their petitions filed herein in the federal district court are the circumstances and dangers incidental to any criminal proceeding. They do not contend that their meetings have been broken up or that they have been threatened with or received any physical harm, see *Hague v. C. I. O.*, supra; nor do they maintain that they are being intimidated in their efforts to practice their profession as lawyers, see *Jordan v. Hutcheson*, 323 F.2d 597 (4th Cir. 1963); nor do they contend that the statutes under which they have been indicted are special legislation passed to retard or block desegregation, see

Bush v. Orleans Parish School Board, 194 F.Supp. 182 (E.D. La. 1961).

The plain fact is that appellants are subjected to no exceptional circumstances and are threatened with no irreparable loss because of the Louisiana criminal prosecutions in which they are presently involved.

4. The Louisiana Laws At Issue Are Ordinary Criminal Statutes Which Have Not Been Construed By The Louisiana Supreme Court.

Unlike the emergency legislation involved in *Bush v. Orleans Parish School Board*, 194 F.Supp. 182 (E.D. La. 1961), the Louisiana Subversive Activities and Communist Control Law and the Louisiana Communist Propaganda Control Law*involved in the case at bar have existed in Louisiana in one form or another since the early fifties. See Act 506 of 1952 of the State of Louisiana requiring communists and members of communist front organizations to register, etc.; Act 623 of 1954 of the State of Louisiana making it a crime to commit or advocate acts intended to overthrow the Constitution of the United States or of Louisiana; *State v. Jenkins*, 236 La. 300, 107 So.2d 648.

As the Louisiana laws here at issue have been in existence for ten or twelve years, it cannot intelligently be argued that they constitute special legislation passed to impede desegregation or to harass integrationists. See *Bush v. Orleans Parish School Board*, 194 F.Supp. 182 (E.D. La. 1961). The chal-

*See Arts. 358-389, 390-390.8, La. Crim. Code, L.R.S. 14:358-389, 390-390.8.

lenged statutes in the present proceedings are ordinary criminal provisions. Furthermore, the question of the constitutionality of these statutes from the point of view of preciseness of language, overbreadth, etc., has never been presented to the Louisiana Supreme Court for determination, although in 1958 that court held that Articles 366-380 of the Louisiana Criminal Code, L.R.S. 14:366-380, the Louisiana Subversive Activities Law, had been superseded by congressional enactment of the Smith Act, 18 U.S.C., Section 2385, and dismissed a bill of information charging an accused with being a member of the Communist Party on the authority of *Commonwealth of Pennsylvania v. Nelson*, 350 U.S. 497. However, the position of the Louisiana Supreme Court on this issue of supersession was reexamined last year in *State v. Cade*, 244 La. 534, 153 So.2d 382, in the light of this Court's decision in *Uphaus v. Wyman*, 360 U.S. 72. At the present time, consequently, it can be said that the Louisiana Supreme Court has not definitely passed on the constitutional problems of pre-emption, vagueness, overbreadth, etc., which appellants have raised to date in the state criminal proceedings and in their civil suit in federal court.

Considerations of comity and a due regard for the reciprocal niceties of state-federal relationships would appear to require that in the present proceedings the federal courts abstain from passing on the constitutionality of the Louisiana Subversive Activities and Communist Control Law and the Louisiana Communist Propaganda Control Law, and thus allow the Louisiana Supreme Court to pass on the constitutionality of these Louisiana laws, particularly now that

the constitutional questions have been raised by appellants in the Louisiana criminal district court.

5. The Instant Case Is Clearly Distinguishable From *Baggett v. Bullitt*.

The circumstances surrounding the case at bar cry out for abstention on the part of the federal courts. Unlike the situation which prevailed in the recent case of *Baggett v. Bullitt*, 377 U.S. 360, the two Louisiana statutes involved here will be construed in the Louisiana courts with reference to a concrete, particularized situation, so necessary to bring into focus the impact of the laws on constitutionally protected rights of speech and association. Here the Louisiana courts would not have to construe the assailed laws abstractly; on the contrary, it is the federal court in the instant proceedings which would have to construe these laws in the abstract.

Furthermore, the instant matter poses problems of comity not present in *Baggett*. Here, unlike *Baggett*, proceedings were begun against appellants by the State of Louisiana before appellants filed their civil suit in the United States district court.

6. The Cases Relied On by Circuit Judge Wisdom In His Dissent Are Inapposite.

In urging his two bretheren of the district court not to abstain Circuit Judge Wisdom relied on a number of cases which are inapposite in the instant case.

Jordan v. Hutcheson, 323 F.2d 597 (4th cir. 1963), was a class action by Negro attorneys against a Com-

mittee of the Virginia State Legislature to enjoin the committee members and others from taking unlawful action to harass and intimidate the plaintiff lawyers and their clients. No criminal prosecutions had been begun against the Negro attorneys by the State of Virginia when the federal suit was filed, nor was the federal court asked to invalidate a Virginia statute.

Bush v. Orleans Parish School Board, 194 F.Supp. 182, (E.D. La. 1961), was a suit by the United States to enjoin the enforcement of two emergency measures passed by the Louisiana Legislature in the Second Extraordinary Session of 1961 in an effort to block integration of the schools in Orleans Parish. The statutes in *Bush*, unlike those in the instant case, were not ordinary criminal provisions, nor had criminal proceedings been instituted under those statutes in the Louisiana courts.

In *Aelony v. Pace*, 32 L.W. 2215, a federal district court enjoined the prosecution under Georgia's unlawful assembly and insurrection statutes of persons who were being held in jail without bond while awaiting presentment of charges against them to the grand jury, a factual situation clearly having no relation to the events of the instant case.

In *Browder v. Gayle*, 142 F.Supp. 707 (M.D. Ala. 1956), as in *Morrison v. Davis*, 252 F.2d 102 (5th Cir. 1958), the state or local statutes struck down by the federal courts were patently unconstitutional under the decision of this Court in the *School Segregation Cases*, 347 U.S. 483, in which the separate but equal doctrine was repudiated. No study of the statutes

themselves was required. The reverse is true in the instant case. There is nothing inherently unconstitutional about state subversive activities statutes.

In *United States v. Wood*, 295 F.2d 772 (5 Cir. 1961), an injunction was granted by the federal court to delay the prosecution by the State of Mississippi of a Negro who had been arrested for breach of the peace while helping other Negroes to register for voting. The Fifth Circuit opinion points out that under the particular facts of the case adequate safeguards did not exist in the state criminal system to protect the constitutional rights of the accused and that consequently interference in the state criminal system was warranted. In the present case adequate safeguards exist in the Louisiana courts.

In *City of Houston v. Jas. K. Dobbs*, 232 F.2d 428 (5 Cir. 1956), an established purveyor of food would have, on the effective date of a Houston ordinance, suffered the immediate loss of all its customers and business in Houston. Under the peculiar circumstances of the case the federal court was of the view that it was justified in finding that immediate and irreparable injury would result if the enforcement of the ordinance was not stayed.

In *Denton v. City of Carrollton, Georgia*, 235 F.2d 481 (5 Cir. 1956), a labor union agent would have had to pay \$32,300 to test the validity of a city ordinance establishing a tax with punitive qualities, with small chance of ever being able to recover the sum paid. Under these circumstances the federal court held that there was substantial basis for equitable relief.

Not one of the above cases involves a situation in which a state was proceeding in an orderly manner under a specific criminal statute of long standing and through established and fair criminal process providing adequate safeguards for the protection of constitutional rights, as in the instant proceeding. Further, the parties seeking relief in the federal court in the cases relied on by Judge Wisdom were threatened with an immediate and irreparable loss of liberty or property, which is not the situation in the instant proceeding.

In contrast to the cases discussed immediately above, appellee is of the view that the following decisions are pertinent and support appellee's contention that abstention is indicated herein:

In *Fenner v. Boykin*, 271 U.S. 240, this Court said:

"*Ex parte Young*, 209 U.S. 123, and following cases have established the doctrine that when absolutely necessary for protection of constitutional rights courts of the United States have power to enjoin state officers from instituting criminal actions. But this may not be done except under extraordinary circumstances where the danger of irreparable loss is both great and immediate. Ordinarily, there should be no interference with such officers; primarily, they are charged with the duty of prosecuting offenders against the laws of the State and must decide when and how this is to be done. The accused should first set up and rely upon his defense in the state courts, even though this involves

a challenge of the validity of some statute, unless it plainly appears that this course would not afford adequate protection." (Emphasis supplied)

In *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496, the Pullman Company and various railroads brought an action in the federal district court to enjoin an allegedly illegal and unconstitutional regulation by the Texas Railroad Commission which would require that Pullman sleeping cars be continuously in charge of an employee "having the rank and position of a Pullman conductor." Some of the Texas trains of the railroads involved had but one Pullman sleeping car which was in charge of a colored porter subject to the control of the train conductor, and Pullman porters intervened in the action, urging that it discriminated against Negroes in violation of the Fourteenth Amendment. This Court held that the federal district court should abstain in the matter pending decision of the question in the Texas courts, saying:

"The history of equity jurisdiction is the history of regard for public consequences in employing the extraordinary remedy of the injunction. There have been as many and as variegated applications of this supple principle as the situations that have brought it into play. . . . Few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies, whether the policy relates to the enforcement of the criminal law, *Fenner v. Boykin*, 271 U.S. 240; *Spielman Motor Co. v. Dodge*, 295 U.S. 89; or the

administration of a specialized scheme for liquidating embarrassed business enterprises, *Pennsylvania v. Williams*, 294 U.S. 176, or the final authority of a state court to interpret doubtful regulatory laws of the state, *Gilchrist v. Interborough Co.*, cf. *Hawks v. Hamill*, 288 U.S. 52, 61. These cases reflect a doctrine of abstention appropriate to our federal system whereby the federal courts, 'exercising a wise discretion,' restrain their authority because of 'scrupulous regard for the rightful independence of the state governments' and for the smooth working of the federal judiciary. . . . This use of equitable powers is a contribution of the courts in furthering the harmonious relation between state and federal authority without the need of rigorous congressional restriction of those powers. . . .

"Regard for these important considerations of policy in the administration of federal equity jurisdiction is decisive here. If there was no warrant in state law for the Commission's assumption of authority there is an end of the litigation; the constitutional issue does not arise. The law of Texas appears to furnish easy and ample means for determining the Commission's authority. . . . In the absence of any showing that these obvious methods for securing a definitive ruling in the state courts cannot be pursued with full protection of the constitutional claim, the district court should exercise its wise discretion by staying its hands. . . ."

In *A. F. of L. v. Watson*, 327 U.S. 582, this Court held that various national and local labor organizations operating in Florida had made a showing of clear and imminent irreparable injury in their suit in federal district court to enjoin enforcement of a provision of the Florida constitution, but that nevertheless the federal court erred in passing on the merits of the controversy involving constitutional issues concerning the meaning of a provision of the Florida constitution, for the reason that this constitutional provision had never been construed by the Florida courts. See also *Federation of Labor v. McAdory*, 325 U.S. 450.

Albertson v. Millard, 345 U.S. 242, is very similar to the instant matter. There five days after enactment of the Michigan Communist Control Act of 1952 the Communist Party of Michigan sued in a federal district court for a declaratory judgment that the new law violated the United States Constitution, and also asked for an injunction against its enforcement. A similar suit was brought in a Michigan court seeking a declaratory judgment declaring the act unconstitutional. This Court ordered that the proceedings in the federal district court be held in abeyance pending construction of the statute by the state courts, saying that it was appropriate that the state courts construe the Michigan statute before the federal district court took any further action in the matter. See also *Government Employees v. Windsor*, 353 U.S. 364.

In *Harrison v. N.A.A.C.P.*, 360 U.S. 167, the National Association for the Advancement of Colored People brought suit in a federal district court attacking the constitutionality of five Virginia statutes and ask-

ing that their enforcement be enjoined. As in the instant case, the Attorney General of Virginia and other defendants opposed the federal action on the ground, among others, that the federal court should not exercise its jurisdiction to enjoin the enforcement of state statutes which had not been construed by the state courts. The federal district court found three of the Virginia statutes to be unconstitutional and enjoined their enforcement against the NAACP; it also held the two other state statutes to be vague and ambiguous but withheld judgment on them pending their construction by the state courts. This Court vacated the district court judgment on the premise that the lower court should have abstained from deciding the merits of the issues tendered it, so as to afford the Virginia courts a reasonable opportunity to construe the statutes in question. The following significant language appears in this Court's opinion in *Harrison*:

"This now well established procedure (i.e., abstention) is aimed at the avoidance of unnecessary interference by the federal court with proper and validly administered state concerns, a course so essential to the balanced working of our federal system. To minimize the possibility of such interference a 'scrupulous regard for the rightful independence of state governments . . . should at all times actuate the federal courts,' *Matthews v. Rodgers*, 284 U.S. 521, 525, as their 'contributions . . . in furthering the harmonious relation between state and federal authority. . . .'
Railroad Comm'n v. Pullman Co., 312 U.S. 496, 501. In the service of this doctrine, which this Court has applied in many differ-

ent contexts, no principle has found more consistent or clear expression than that the federal courts should not adjudicate the constitutionality of state enactments fairly open to interpretation until the state courts have been afforded a reasonable opportunity to pass upon them. . . . This principle does not, of course, involve the abdication of federal jurisdiction, but only the postponement of its exercise; it serves the policy of comity inherent in the doctrine of abstention; and it spares the federal courts of unnecessary constitutional adjudication." (Emphasis supplied)

Appellee is of the respectful view that the foregoing decisions of this Court fully support the decision of the federal district court herein to abstain from passing on the constitutionality of the Louisiana Subversive Activities and Communist Control Law and the Louisiana Communist Propaganda Control Law.

CONCLUSION

Jim Garrison, District Attorney for the Parish of Orleans and appellee herein, respectfully submits that the judgment of the United States District Court for the Eastern District of Louisiana, denying the application for injunction and dismissing this suit, is correct and should be affirmed.

JIM GARRISON,
DISTRICT ATTORNEY
FOR THE PARISH OF
ORLEANS

CHARLES R. WARD,
FIRST EXECUTIVE
ASSISTANT DISTRICT
ATTORNEY FOR THE
PARISH OF ORLEANS

LOUISE KORNS,
ASSISTANT DISTRICT
ATTORNEY FOR THE
PARISH OF ORLEANS

JOHN VOLZ,
ASSISTANT DISTRICT
ATTORNEY FOR THE
PARISH OF ORLEANS.

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**NOTICE TO DEBENTURE AND
BONDHOLDERS**

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 941

JAMES A. DOMBROWSKI, et al,

v.

JAMES H. PFISTER, et al.

*On Appeal from the United States District Court for the
Eastern District of Louisiana, New Orleans Division*

MOTION TO DISMISS

The purpose of this motion is to present to the Court a jurisdictional issue not heretofore raised. Since, the Court has noted probable jurisdiction in this appeal, and therefore the jurisdictional issue would not ordinarily be discussed in the briefs of the parties, it is thought proper to present to the Court preliminarily this question, which has not been presented to the court below or in the motion to dismiss or affirm heretofore filed in this Court. Should the Court prefer to consider this question at the time of the argument on the appeal, leave is requested to include authority and argument on this issue in the briefs of appellees. It should be noted also that this issue came to the attention of counsel for appellees in the course of their research following the receipt of the

Transcript of Record, and for this reason was not included in the motion to dismiss or affirm.

The issue is whether the trial court had jurisdiction over the cause of action. Jurisdiction is a threshold question which can be raised at any time. *Mansfield, Coldwater and Lake Michigan Railway Co. v. Swan*, 111 U. S. 379. Before hearing argument on this appeal, the Court may want to consider the jurisdictional question to determine whether the appeal is properly before the Court.

Paragraph 9 of the complaint herein, found in the Transcript of Record, on page two, asserts jurisdiction on several different bases, which will be discussed individually.

1. Title 28, Section 1331 (a), United States Code. This section relates to actions arising under the Constitution, laws or treaties of the United States, and requires a minimum jurisdictional value. Other than the assertion in paragraph ten of the complaint that the amount in controversy exceeds \$10,000, nowhere in the complaint is there any claim, demand, or other indication of monetary damage or value. This is an equity action seeking injunctive relief, but the requirement of minimum jurisdictional value is still applicable. There is nothing in the complaint to establish any value other than the jurisdictional assertion, and this is insufficient to satisfy the statutory jurisdictional requirement.

2. Title 28, Section 1343 (3, 4) United States Code. This is the civil rights provision of the Judicial Code. The caption of the complaint herein lists the defendants (appellees) individually and in their official capacities, but the only allega-

tions of the complaint as to any conspiratorial actions on the part of the individual defendants, as distinguished from the state agencies they represented, are as follows:

a. In paragraph 13 of the complaint defendants Pfister and Willie are alleged to have obtained a warrant of arrest, and defendant Pfister was alleged to have threatened and continued to threaten to attempt to obtain a new prosecution and to hold legislative hearings on the part of his committee.

b. In paragraph 14 of the complaint defendant Pfister is alleged to have utilized certain photostats based on which the committee of which he was chairman adopted a resolution calling on defendant Garrison to prosecute officials of the corporation, and defendant Pfister was alleged to have publicly announced the intention of delivering to defendant Garrison copies of documents illegally seized from the plaintiffs for the purpose of the institution of criminal proceedings.

Thus defendants Davis, Gremillion, and Burbank are nowhere mentioned by name in the allegations of conspiracy. Defendant Garrison is only alleged to have been named in a resolution of a legislative committee. Defendant Willie is alleged only to have obtained arrest and search warrants which have been partially vacated. Defendant Pfister is also alleged to have threatened new prosecutions and legislative hearings before the committee of which he was chairman. The conspiracy alleged is at best attributable to the various agencies of the State, rather than the actions of individuals. As such, under the decision of this Court in *Monroe v. Pape*, 365 U. S. 167, where it was held that jurisdiction under the Civil Rights Act is limited to actions against individuals, it is submitted

that this is not a case properly falling within the jurisdiction of the federal courts under that statute.

As said in *Ex parte Young*, 209 U.S. 123:

"In making an officer of the State a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional it is plain that such officer must have some connection with the enforcement of the act, or the court is merely making him a party as a representative of the State, and thereby attempting to make the State a party."

The Court said further:

"It is proper to add that the right to enjoin an individual, even though a state official, from commencing suits under circumstances already stated, does not include the power to restrain a court from acting in any case brought before it, either of a civil or criminal nature, nor does it include power to prevent any investigation or action by a grand jury. The latter body is part of the machinery of a criminal court and an injunction against a state court would be a violation of the whole scheme of our Government. If an injunction against an individual is disobeyed, and he commences proceedings before a grand jury or in a court, such disobedience is personal only, and the court or jury can proceed without incurring any penalty on that account."

Since the individual plaintiff is now under indictment and awaiting trial following grand jury indictment, the federal district court below would also be barred from issuing an injunction by virtue of Title 28, Section 2283, of the United

States Code, even if this Court were to reverse the court below, and remand the case for further proceedings.

3. Title 28, Section 2281, United States Code. This is the statutory provision for a three-judge federal district court in injunction actions involving asserted unconstitutionality of state statutes, and does not confer federal jurisdiction.

4. Title 28, Sections 2201 and 2202, United States Code. These are the sections of the Judicial Code providing for relief in the form of declaratory judgment on the part of a federal district court in "a case of actual controversy within its jurisdiction," and is not an independent source of federal jurisdiction.

5. Title 42, Sections 1971, 1981, 1983 and 1985, United States Code. These are the additional civil rights provisions, the jurisdictional section of which is found at Title 28 of the United States Code, Section 1343, and which is discussed above under heading number 2.

6. The Constitution of the United States, and particularly the First, Fourth, Fifth and Fourteenth Amendments thereto. The federal jurisdictional provision of the Judicial Code relating to actions arising under the Federal Constitution is Section 1331 of Title 28, United States Code, and is discussed under heading number 1 above.

It is not the purpose of appellees to avoid consideration by this Court of the Constitutionality of the statute involved in this appeal, but it is their position that such consideration should properly arise on appeal from the Supreme Court of the State of Louisiana, based on consideration by the courts

of that State, rather than the present appeal, where the Court does not have the benefit of the opinion of any Court below on this question.

Wherefore, the foregoing motion being considered, Defendant-Appellee James H. Pfister respectfully prays that the appeal herein be dismissed.

By Attorney:

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Of Counsel

CERTIFICATE

I certify that a copy of the foregoing motion to dismiss was served upon plaintiffs-appellants by mailing same to their counsel of record, postage prepaid, at their office address, this _____ day of November, 1964.

Jack N. Rogers
Counsel for James H. Pfister
Defendant-Appellee

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JOHN E. DAVIS, CLERK

Supreme Court of the United States

October Term, 1964

No. 52

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE
EDUCATIONAL FUND, INC.,

Appellants,

BENJAMIN E. SMITH and BRUCE WALTZER,
Appellants-Intervenors,
against

JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, RUSSELL R. WILLIE, individually and as Major of the Louisiana State Police Department, JIMMIE H. DAVIS, individually and as Governor of the State of Louisiana, JACK P. F. GREMILLION, individually and as Attorney General of the State of Louisiana, COLONEL THOMAS D. BUREANK, individually and as Commanding Officer of the Division of Louisiana State Police, and JIM GARRISON, individually and as District Attorney for the Parish of Orleans, State of Louisiana,

Appellees.

**BRIEF FOR APPELLEE
JIMMIE H. DAVIS**

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Jimmie H. Davis*

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Supreme Court of the United States

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Appellees.

BRIEF FOR APPELLEE JIMMIE H. DAVIS

QUESTIONS PRESENTED

1. Whether a federal district court has jurisdiction to enjoin a state criminal proceeding under a state statute, when at the time of filing of the action in the federal court a grand jury had received instructions to investigate violations of the statute on the part of the plaintiffs, and documents had been subpoenaed for presentation to the grand jury.

2. Whether a federal district court has discretionary power to defer to the state courts for the determination of

the constitutionality of a state statute in the course of the criminal proceeding, and if so, to what extent the exercise of such discretion may be reviewed on appeal.

STATEMENT OF THE CASE

According to the allegations of the pleadings and the affidavits of appellants, on October 2, 1963 appellees Pfister and Willie attempted to obtain the prosecution of appellants by obtaining warrants of arrest and search warrants based on sworn affidavits alleging that appellants had conspired to violate Louisiana Revised Statutes 14: 358 and 14: 390, *et seq.* The warrants of arrest were vacated, but appellee Pfister threatened to obtain new prosecutions and hold legislative hearings. (R. 3) On November 8, 1963 the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature held a hearing, at which time photostats of certain documents seized on October 4, 1963 under the search warrants were utilized, and announced their intention of delivering to appellee Garrison copies of the documents for the purpose of presenting them to the Orleans Grand Jury for institution of criminal proceedings under the same statutes. (R. 3-4) Appellants Walzer and Smith in October 1963, petitioned the Criminal District Court for the Parish of Orleans for a pre-trial hearing, so that whatever evidence existed against them could be brought to the attention of the court. (R. 52)

Thereafter, the Executive Assistant of the District Attorney for the Parish of Orleans informed appellants Smith and Walzer following November 8, 1963 (1) that the District Attorney's office had subpoenaed the copies of the records used by the Committee, (2) in turn the Orleans Parish Grand Jury had subpoenaed copies of the records from the District Attorney's office, (3) the Grand Jury was to meet on November 20, 1963, at which time this evidence would be presented to the members of the Grand Jury, which had been charged by the Honorable Malcom

O'Hara, Judge of the Criminal District Court to investigate the Southern Conference Educational Fund, Inc. (hereinafter referred to as SCEF) and its officers. (R. 20, 52-53) On November 15, 1963, it was reported in the public press and via radio and television that the Criminal District Court had charged the Orleans Parish Grand Jury with responsibility for investigating violations of the above statutes. (R. 59) The present suit was commenced on November 12, 1963, seeking injunctive action, and on November 18, 1963, Judge John Minor Wisdom signed a temporary restraining order, from which the members of the Orleans Parish Grand Jury and Judge Malcom V. O'Hara had been stricken. (R. 9-12) Hearing before the three judge court convened by the Chief Judge of the Fifth Circuit was held on December 9, 1963 and January 10, 1964, and on February 4, 1964 the application for injunction was denied. This appeal followed. Appellants are under indictment and awaiting trial.

ARGUMENT

1. The Issues in This Appeal Relate to the Jurisdiction and Injunctive Authority of the Federal Courts.

What this Court is called on to pass upon at this juncture is whether the complaints filed in the court below stated a cause of action on which relief could be granted by that court, and if so, whether the court below had with in its discretionary authority the power to defer to the courts of the State of Louisiana.

Appellants address the major part of their argument to the proposition that the state statute under which the appellants were indicted is unconstitutional, both on its face and as applied to the appellants.

Even if this Court should be convinced that the statute involved here is unconstitutional, this conviction does not give the Court jurisdiction to make this determination unless the court below had jurisdiction to grant the relief

requested in the complaint, and unless the court below acted beyond its powers in deferring to the courts of the State. If the Court should decide that the court below acted contrary to law, still, if this Court is not to undertake piecemeal determination of the constitutional issues, it should remand the case for determination of the constitutional issues. Although the court below determined at one stage in its consideration of the complaints that the statute was not unconstitutional on its face, its decision was to dismiss the complaint for its failure to state a claim upon which relief could be granted (R. 63), on the ground that the injunctive relief requested could not be granted, and that the issue of constitutionality should be left for determination by the State courts in the course of the criminal proceeding, subject to appeal to this Court. (R. 72-74) Based on this decision, the court below refused to hear evidence as to whether the statute was unconstitutional as applied to the appellants.

Thus the court below has not passed on the constitutional issues, except as incidental to the jurisdictional questions. This Court does not have the benefit of either a record or a decision of any court below on these issues. The jurisdictional issues are the only ones properly before the Court.

2. A Federal District Court Cannot by Virtue of the Civil Rights Act Grant an Injunction To Stay a Criminal Proceeding in a State Court.

Title 28, Section 2283, of the United States Code, specifically provides that a federal court may not grant an injunction to stay proceedings in a state court, except as expressly authorized by Act of Congress or when necessary in aid of its jurisdiction, or to protect or effectuate its judgments. The present case is an injunction action against the prosecution of appellants by appellees in the courts of Louisiana under a Louisiana statute.

Section 2283 and its predecessors have been among the most widely litigated federal statutes, due to the sen-

sitive area of federal-state relationships in which they operate. This legislation originated in the Act of March 2, 1793, as an amendment to the Judiciary Act of 1789, establishing the federal courts (1 Stat. 73), and provided that no writ of injunction would be granted by a federal court to stay proceedings in any state court (1 Stat. 333). In 1874 a statutory exception was made with respect to bankruptcy proceedings (36 Stat. 1162). With only minor changes, the same provision was incorporated into the Judicial Code of 1911 as Section 265. However, in the writing of the Judicial Code of 1948, three exceptions were introduced into Section 2283: (1) express authorization by Act of Congress, (2) where necessary in aid of jurisdiction, and (3) to protect or effectuate judgments.

Certain decisions of this Court had engrafted additional exceptions. In *Wells Fargo & Co. v. Taylor*, 254 U.S. 175, 182, the Court indicated "that it was settled by repeated decisions and in actual practice that when the elements of federal and equity jurisdiction are present, the provision (Section 265) does not prevent the federal courts from enjoining the institution in the state courts of proceedings to enforce local statutes which are repugnant to the Constitution of the United States." The Court held in *Essanay Film Co. v. Kane*, 258 U.S. 358, 361, that in "exceptional cases the letter (of Section 265) has been departed from while the spirit of the prohibition has been observed."

However, in *Toucey v. New York Life Insurance Co.*, 314 U.S. 118, the Court held that the statute should be strictly construed, and indicated that the foundation of the *Wells Fargo* and *Essanay* decisions was very doubtful. The Court also by indirection cast doubt on two other decisions, *Ex parte Young*, 209 U.S. 123, and *Gunter v. Atlantic Coast Line*, 200 U.S. 273. In 1955, in *Amalgamated Clothing Workers v. Richman*, 348 U.S. 511, 514, the Court said:

"We need not re-examine the series of decisions, prior to the enactment of Title 28 of the United States Code in 1948, which appeared to recognize implied exceptions to the historic prohibition against federal interference with state judicial proceedings. See *Toucey v. New York Life Insurance Co.*, 314 U.S. 118. By that enactment, Congress made clear beyond cavil that the prohibition is not to be whittled away by judicial improvisation . . . Legislative policy is here expressed in a clear-cut prohibition-qualified only by specifically defined exceptions."

The Court referred to the Reviser's Notes in connection with Section 2283, which read as follows:

"An exception as to Acts of Congress relating to bankruptcy was omitted, and the general exception substituted to cover all exceptions."

The Court also held that the fact that exclusive jurisdiction over the cause of action was given by Congress to the federal courts was immaterial.

Appellants argue that at the time the present action was filed, they had not been indicted, and therefore the bar of § 2283 does not apply. The record shows that arrest and search warrants had been issued and executed. The arrest warrants were vacated, but no action taken with respect to the search warrants. Appellants learned that copies of the documents seized under the search warrants, which had not been vacated, had been subpoenaed by the Orleans Parish Grand Jury, which had been charged by the presiding judge to investigate appellants and their organization, and appellants then filed the present action to enjoin appellees from proceeding under the asserted unconstitutional statute.

Thus this is rather different from the situation in *Ex parte Young, supra*, where the Court did not in its opinion make any more than passing reference to the fact that no "proceedings" had been undertaken at the time of filing of the federal action, without further discussion. The rate order complained of had not even become ef-

fective. Here there was at the time the federal suit was filed an outstanding search warrant, an investigation by a grand jury charged by the presiding judge to investigate appellants, and documents subpoenaed for presentation to the grand jury.

The question is whether these actions constitute "proceedings" under Section 2283. In *Hill v. Martin*, 296 U.S. 393, 400, the Court held as to the term "proceedings" as used in Section 265, the immediate predecessor of Section 2283:

"That term is comprehensive. It includes all steps taken or which may be taken in the state court or by its officers from the institution to the close of the final process . . . It applies alike to actions by the court and by its ministerial officers."

The Court cited *Hyattsville Building Association v. Gouic*, 44 App. D.C. 408, 413, where the Court of Appeals for the District of Columbia held that the term "proceedings" referred to "a prescribed course of action for enforcing a legal right and necessarily entails the steps by which judicial action is invoked."

In *Hale v. Henkel*, 201 U.S. 43, 66, this Court said as to grand jury proceedings:

"While there may be some doubt whether the examination of witnesses before a grand jury is a suit or prosecution, we have no doubt that it is a 'proceeding' . . . The word 'proceeding' is not a technical one, and is aptly used by courts to designate an inquiry before a grand jury."

The basis for the grand jury was explained in *Cobbledick v. United States*, 309 U.S. 323, 327, in the following terms:

"The Constitution itself makes the grand jury a part of the judicial process. It must initiate prosecutions for the court to which it is attached and to which, from time to time, it reports its findings."

See also *Hemans v. United States*, 163 F.2d 223, 236 (C.C.A.6, 1947), *Society of Good Neighbors v. Groat*, 77 F. Supp. 695, 698 (D.C. Mich., 1948), and *State v. Rodrigues*, 219 La. 217, 52 So. 2d 756, 758.

Appellants also argue that the Civil Rights Act, which vests jurisdiction in the federal courts to redress Constitutional deprivations, was intended to authorize injunctive relief against state court proceedings. This Court has not passed on the effect of this statute (42 U.S.C. 1983) on the prohibition of Section 2283, and the legislative history provides no indication in this respect. The recent decision of the Fourth Circuit in *Baines v. Danville*, decided August 10, 1964, holds that the conferring of federal jurisdiction to redress civil rights violations is not an exception to the prohibition on injunctions against state court proceedings. See also *Smith v. Village of Lansing*, 241 F.2d 856, and *Goss v. Illinois*, 312 F.2d 257, decided by the Seventh Circuit.

It is notable that after the Civil War, when the original Civil Rights Act was passed, and the Act of March 2, 1893 (1 Stat. 333) then existing was an absolute prohibition against injunctions being granted to stay proceedings in any state court, the Congress did not see fit to change this prohibition. The conditions existing in the state courts in the South in the post-Civil War period, which led to the enactment of the Civil Rights Act giving the federal courts concurrent jurisdiction in any case involving asserted deprivations of constitutional rights, still did not lead to a dilution of the anti-injunction provision. At that time it could not be asserted that the Civil Rights Act fell within the exceptions provided by statute to injunctive actions, since no provision for such exceptions existed until 1874, when the 1893 statute was amended as to bankruptcy actions only. The language was broadened into its present form only in 1948.

3. Assuming the Existence of Jurisdiction To Grant Injunctive Relief Against the Prosecution of Appellants in the State Courts, the Record in This Case Does Not Establish the Extraordinary Circumstances Required Before Equitable Relief Will Be Granted.

Along with the statutory ban on federal injunctive authority over state court proceedings, the federal courts have applied a strict rule of equitable abstention to actions involving attacks on state statutes except in only the most extraordinary situations. This Court has held that when equitable interference with state action is sought in federal courts, judicial consideration of acts of importance primarily to the people of the state should as a matter of discretion be left by the federal courts to courts of the legislating authority, unless exceptional circumstances command a different course. *Stainback v. Mo Hock Ke Lok Po*, 336 U.S. 363, 383.

The court below in the present case decided that under the circumstances of the case, it should not interfere with the state prosecution. Appellants ask this Court to override the discretionary power of the court below and substitute its judgment on conditions existing at the time and in the judicial district where the court convened.

What are the exceptional circumstances asserted by appellants? It should be noted that there was no hearing on this issue, and at this stage of the proceedings the only inquiry is whether the complaint makes out a prima facie case in this respect, subject to proof in the event the Court finds in favor of appellants. The court below would then have the responsibility of making fact findings in this respect.

The complaint alleged that the threats of appellees to enforce the statute were for the sole purpose of deterring, intimidating, hindering, preventing and depriving appellants, their friends, members and supporters,

who have been attempting to eliminate racial segregation peacefully through the exercise of their rights to freedom of speech, press, assembly and association, of their constitutional rights. (R. 4-5) The complaint of the intervening appellants also asserted that indictment of appellants is calculated to curtail the Civil Rights activities of appellants as effectively as could actual conviction, in that (1) charges and indictments of officers and members of Civil Rights organizations for alleged communist or subversive activity deter many from participation in or contribution to them, both by those who believe such charges to be true, and by those who know them to be false, the latter as a result of their fear of public embarrassment by popular disapproval of their association with a group so charged; and (2) the fund-raising ability of SCEF would be greatly hampered as would the number of active participants in its programs. (R. 28) Also the intervening appellants asserted that their law practice, including their ability to handle Civil Rights cases, could be and has been seriously affected adversely as the result of criminal charges or indictment alleging communist or subversive activity, the complete falsity of such charges being of little consequence. (R. 28)

These asserted consequences of the criminal proceedings against the appellants are of great importance, both to the livelihoods of the individual appellants and the work of SCEF. We as lawyers cannot help but sympathize particularly with the plight of a professional man indicted for commission of a crime. If the constitutionality of the statute under which appellants are indicted could be determined in a civil proceeding where the criminal penalties and atmosphere are not involved, this would certainly ameliorate the hardship to them. But what a precedent would be established! It would necessarily give rise to a race to the courthouses, state and federal, upon any word being received of grand jury investigations under a state statute.

We are all aware of the serious problems existing in the South in the civil rights area, but is the existence of this situation ameliorated by the exercise of federal jurisdiction to override state courts, in the absence of any assertion that justice will not be done in the courts of the state. No such allegation is made herein, and in fact, the actions of the judge of the Criminal Court for the Parish of Orleans in summarily vacating the arrest warrants, and of the Supreme Court of the State of Louisiana in declaring the predecessor statute to that involved in this appeal unconstitutional, indicate to the contrary. *State v. Jenkins*, 236 La. 300, 107 So. 2d 648.

Appellants rely largely on the recent cases under the Civil Rights Act as indicating a special situation requiring a jurisdictional precedent. In *Stefanelli v. Minard*, 342 U.S. 117, 121, this Court considered the effect of the Civil Rights Act on its previous position, and concluded:

"Only last term we restated our conviction that the Civil Rights Act 'was not to be used to centralize power so as to repeal the federal system.' *Collins v. Hardyman*, 341 U.S. 651, 71 S. Ct. 937, 940, 95 L. Ed. 1253. Discretionary refusal to exercise equitable power under the Act to interfere with State criminal prosecutions is one of the devices we have sanctioned for preserving the balance."

This view of federal-state relations was followed as recently as the 1962 Term in *Cleary v. Bolger*, 371 U.S. 392, in state criminal prosecutions.

The fact that numerous members of a class are threatened with prosecution is not sufficient to establish extraordinary circumstances. *Douglas v. Jeanette*, 319 U.S. 157, 165. Nor is the claim of irreparable injury due to the inability to follow one's occupation sufficient. *Stainback v. Mo Hock Ke Lok Po*, *supra*. Only in the event it plainly appears that resort to state proceedings would not afford adequate protection might extraor-

dinary hardship be established, assuming Section 2283 is no bar. *Femmer v. Boykin*, 271 U.S. 240, 243. The claim of exceptional circumstances in the present case, other than the effect on appellants' activities, is the deterrent effect on the civil rights movement of possible prosecutions on the basis of the statute involved here. The existence of a criminal statute in any area of activity is bound to have an effect, and it is always possible that prosecutors may misuse their authority. There is, however, no indication of large scale prosecutions under this statute, and in such event the federal courts are always open. The prosecution of appellants has been withheld pending the outcome of this appeal, and it can in no event be a long period of time before the issue of the constitutionality of the statute is passed upon by the state courts, subject to review by this Court. Injunctions look to the future, and by the time this Court remanded the case to the court below for the hearing on the extreme hardship issue, such hearing held, and a decision reached, the criminal prosecution could be completed and appeal to the State Supreme Court might be well along. The indictment is effected, and the hardship necessarily resulting in the publicity of that fact has been done. The necessity of submitting to a trial, onerous as it is, is not the basis for a claim of denial of due process. *Wolf v. Colorado*, 338 U.S. 25. Nor is the imminence of prosecution alone a ground for relief in equity. *Beal v. Missouri Pacific Railroad Co.*, 312 U.S. 45.

For the purpose of this appeal the only issue is whether the complaint has stated a cause of action on which relief can be granted. Thus, assuming this Court finds that the court below had authority to grant injunctive relief despite Section 2283, and that the circumstances set forth in the complaint are so extraordinary as to require the court below to proceed to consider the constitutionality of the state statute, the only action this Court should take is to remand the case to the court be-

low for a determination as to whether the extraordinary circumstances can be proven. Until there is a judicial determination of fact in this respect, and a finding that such circumstances do exist to establish the basis for federal jurisdiction, the court below, and this Court, cannot proceed to make a determination on the constitutional issues. *Beal v. Missouri Pacific Railroad Co.*, *supra*. Extraordinary circumstances must be determined on a case-by-case basis. *Baggett v. Bullitt*, 377 U.S. 360, 375. That case, a class action by approximately sixty four members of the faculty, staff, and student body, raised the jurisdictional issue only of whether a doubtful issue of state law existed requiring construction by a state court. No state criminal action existed, raising the jurisdictional issues involved in the present case.

A natural tendency may well exist to proceed with the consideration of the constitutional issues, even on the basis of the incomplete record before the Court. However, as Mr. Justice Holmes has said:

"The relation of the United States and the Courts of the United States to the States and the Courts of the States is a very delicate matter that has occupied the thoughts of statesmen and judges for a hundred years and can not be disposed of by a summary statement that justice requires me to cut red tape and to intervene."

— Memorandum of Mr. Justice Holmes in 5 *The Sacco-Vanzetti Case*, Transcript of the Record (Henry Holt & Co., 1929) 5516, quoted in the Court's opinion in the *Stefanelli* case, on page 124.

The result, as the Court said in the Douglas opinion, might well be to invite a flanking movement against the system of state courts by resort to the federal forum. In the present case, the Court could only, in any event, consider a part of the constitutional issue, whether the statute is unconstitutional on its face, since no evidence has been taken on its constitutionality as applied to appellants. Such piecemeal consideration does not accord

with proper appellate procedure, or the intention of Congress. *Douglas v. Jeanette*, *supra*, footnote at page 123.

Appellants would cast on appellees the burden of establishing that the court below was justified in not intervening to restrain the state court proceedings. Particularly in view of the exercise of discretion involved on the part of the federal courts in such cases, the burden is actually on the appellants to show that the court below had no basis for exercising its discretion in the manner it did. It is submitted that appellants' pleadings do not contain allegations that the courts of the State will not act promptly and with full regard for their rights, in the criminal proceedings against appellants, or of any extraordinary circumstances that would justify federal intervention to stay state proceedings.

Although it was not raised in the court below, the further threshold jurisdictional issue exists as to whether the complaint was not in fact against the State machinery of justice. Appellants asserted a conspiracy to deprive them of their constitutional rights, but alleged no facts indicating participation of any kind on the part of this appellee in any such conspiracy. The Complaint appears to name anyone connected with the State who might in any manner have any function in connection with a criminal prosecution, irrespective of whether they participated in the proceedings against the appellants. As said by the Court in *Oklahoma Packing Co. v. Oklahoma Gas & Electric Co.*, 309 U.S. 4, 8, 9:

"The present suit, therefore, is for an injunction 'to stay proceedings' previously begun in a state court . . . That the injunction was a restraint of the parties and was not formally directed against the state court itself is immaterial."

See also, *H.J. Heinz Co. v. Owens*, 189 F.2d 505 (C.C.A. 9, 1951). This has particular significance in light of the fact that the action herein was based largely on the Civil Rights Act. Cf. *Monroe v. Pape*, 365 U.S. 167.

CONCLUSION

It is respectfully submitted that the judgment of the court below should be affirmed.

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NOV 23 1964

SUPREME COURT OF THE UNITED STATES DAVIS, CLERK

OCTOBER TERM, 1964

No. 52**JAMES A. DOMBROWSKI AND SOUTHERN CONFERENCE EDUCATIONAL FUND, INC.,**

Appellants,

BENJAMIN E. SMITH AND BRUCE WALTZER,

Appellants-Intervenors,

*against***JAMES H. PFISTER**, individually and as Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, **RUSSELL R. WILLIE**, individually and as Major of the Louisiana State Police Department, **JIMMIE H. DAVIS**, individually and as Governor of the State of Louisiana, **JACK P. F. GREMILLION**, individually and as Attorney General of the State of Louisiana, **COLONEL THOMAS D. BURBANK**, individually and as Commanding Officer of the Division of Louisiana State Police, and **JIM GARRISON**, individually and as District Attorney for the Parish of Orleans, State of Louisiana,

Defendants-Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division.

ORIGINAL BRIEF FOR APPELLEES,**JAMES H. PFISTER, RUSSELL R. WILLIE, JACK P. F. GREMILLION, AND COLONEL THOMAS D. BURBANK.****JACK P. F. GREMILLION,**

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 52

**JAMES A. DOMBROWSKI AND SOUTHERN
CONFERENCE EDUCATIONAL FUND, INC.,**

Appellants,

BENJAMIN E. SMITH AND BRUCE WALTZER,

Appellants-Intervenors,

against

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ORIGINAL BRIEF FOR APPELLEES,

**JAMES H. PFISTER, RUSSELL R. WILLIE, JACK P. F.
GREMILLION, AND COLONEL THOMAS
D. BURBANK.**

ARGUMENT.

Point I.

THE LOUISIANA LEGISLATION ATTACKED HEREIN DOES NOT VIOLATE ON ITS FACE THE FIRST AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

- (a) **Appellants' Attack on Three Separate Statutes with Severable Provisions Should be Limited to Those Sections Under Which Prosecution Has Been Threatened by Enforcement Officials.**

As will be shown by appellees' arguments under Points III and IV of this brief, it is the position of appellees that the constitutionality of none of the provisions attacked herein is properly before this Court. However, in the alternative, and assuming *arguendo* that a constitutional attack is properly before the Court, appellees make the following argument in answer to appellants' contentions.

Inasmuch as the legislation attacked herein is not one inseverable statutory scheme, but consists of numerous provisions, which are severable one from the other, a threshold inquiry must be made as to what sections are before this Court if constitutionality is to be considered.

Point I of appellants' brief refers to "the Louisiana Statute" as violating on its face the First and Fourteenth Amendments of the U. S. Constitution. The legislation under attack herein is not one statute, but three separate statutes. R.S. 14:358-374 (the Subversive Activities and Communist Control Law) was enacted as Louisiana Act 270 of 1962. R.S. 14:385-388 was enacted as Louisiana Act-260 of 1958. R.S. 14:390-390.8 (the Communist Propaganda Control Law) was enacted as Louisiana Act 245

of 1962. All of these Acts are severable from one another, and the sections of each act are severable from one another. (See *infra*, discussion of severability clause of Act 270 of 1962, under subpoint (b).)

Appellants' constitutional attack on the Louisiana Subversive Activities and Communist Control Law (R.S. 14:358-374), the Louisiana Communist Propaganda Control Law (R.S. 14:390-390.8) and R.S. 14:385-388 assails every provision of every statute and is remarkably similar to the arguments made by the Communist Party of the United States in *Communist Party of the United States v. Subversive Activities Control Board*, 367 U. S. 1, 81 S. Ct. 1357, 1396-1397. In the latter case this Court answered the sweeping Constitutional attack as follows:

"Many of these questions are prematurely raised in this litigation. Merely potential impairment of constitutional rights under a statute does not of itself create a justiciable controversy in which the nature and extent of those rights may be litigated. *United Public Workers v. Mitchell*, 330 U. S. 75, 67 S. Ct. 556, 91 L.Ed. 754; *International Longshoremen's & Warehousemen's Union v. Boyd*, 347 U. S. 222, 74 S. Ct. 447, 98 L.Ed. 650. Even where some of the provisions of a comprehensive legislative enactment are ripe for adjudication, portions of the enactment not immediately involved are not thereby thrown open for a judicial determination of constitutionality. 'Passing upon the possible significance of the manifold provisions of a broad statute in advance of efforts to apply the separate provisions is analogous to rendering an advisory opinion upon a statute or a declaratory judgment upon a hypo-

thetical case. . . . In part, this principle is based upon the realization that, by the very nature of the judicial process, courts can most wisely determine issues precisely defined by the confining circumstances of particular situations. . . . These considerations, crucial as they are to this Court's power and obligation in constitutional cases, require that we delimit at the outset the issues which are properly before us in the present litigation." . . .

See also *Poe v. Ullman*, 367 U. S. 497, 81 S. Ct. 1752, 1756, 1757, wherein the Court stated:

" . . . federal judicial power is to be exercised to strike down legislation, whether state or federal, only at the instance of one who is himself immediately harmed, or immediately threatened with harm, by the challenged action. . . . 'This Court can have no right to pronounce an abstract opinion upon the constitutionality of a State law. Such law must be brought into actual or threatened operation upon rights properly falling under judicial cognizance, or a remedy is not to be had here' . . . 'The party who invokes the power (to annul legislation on grounds of its unconstitutionality) must be able to show not only that the statute is invalid, but that he has sustained or is immediately in danger or sustaining some direct injury as the result of its enforcement, . . . 'The theory upon which, apparently, this suit was brought is that parties have an appeal from the legislature to the courts; and that the latter are given an immediate and general supervision of the constitutionality of the acts of the former. Such is not true.' "

See also *United States v. Raines*, 362 U. S. 17, 20-21, 80 S. Ct. 519, 522 (1960);

United States v. Nat'l Dairy Products Corp., 372 U. S. 29, 36, 83 S. Ct. 594, 599 (1963).

When the issues before this Court in the present litigation are limited in the light of the October 25, 1963, discharge of appellants from arrest by the state Court, the January, 1964, indictments against appellants for violating R.S. 14: 360 and 364 (4) (6) and (7), and the granting by the state Court on June 12, 1964, of the motion to suppress the evidence seized on October 4, 1963, only Sections 359, 360, 363, 364 (4), (6), and (7) and 365 of Title 14 are immediately involved and are before this Court.

With the remainder of the statutes attacked by appellants, this Court is not concerned, as there exists no threatened prosecution by law enforcement officials of appellants under any of the remaining legislation. See *Poe v. Ullman*, *supra*.

For example, there exists no threat under the Louisiana Subversive Activities and Communist Control Law to deprive appellants of voting privileges, public employment, a place on the ballot, or corporate privileges. Nor has any demand been made upon appellants to furnish the affidavits provided for under R.S. 14:385-388; nor does any threat exist by any state law enforcement official to prosecute them under R.S. 385-388 or the Communist Propaganda Control Law. (R.S. 14:390 *et seq.*) Any threat to prosecute appellants under the Communist Propaganda Control Law was laid to rest on October 25, 1963, when the state Court discharged appellants Dombrowski, Smith, and

Waltzer from arrest for violation of R.S. 14:390 *et seq.* for lack of probable cause. See Stenographic Transcript of Testimony and Notes of Evidence Taken on the Preliminary Examination, Proceedings No. 181-975 of the Criminal District Court for the Parish of Orleans, State of Louisiana, Section "E", pp. 23, 25, 26, 32-33, 38. Since appellants' discharge, no state law enforcement official has threatened them with prosecution under R.S. 14: 390 *et seq.* Judge O'Hara's charge to the Orleans Parish Grand Jury to determine whether the Subversive Activities and Communist Control Act had been violated was under the authority of a specific provision of the latter act (R.S. 14: 368) and did not concern any violations of the Communist Propaganda Control Act (R.S. 14: 390 *et seq.*) The January, 1964, indictments of appellants by the grand jury were for the violation of R.S. 14: 360 and 364 (4), (6), and (7) and had nothing whatever to do with R.S. 14: 390 *et seq.*

Therefore, the only threat of prosecution existing against appellants is under Section 364 (4), (6), and (7) of the Subversive Activities and Communist Control Act. As Judge Wisdom stated in his dissenting opinion in this case (R. p. 92) "the constitutional attack affects many more sections of the law than those sections for violation of which the plaintiffs have been threatened with prosecution."

Yet it appears to be appellants' contention that although they are not threatened by any law enforcement officials with prosecutions or sanctions under the remainder of the attacked legislation, the fact that they are advocates of integration entitles them to attack the entire "statutory scheme" (to borrow their phraseology) as unconstitutionally vague because its legislative history

shows its purpose to be the preservation of segregation in Louisiana.

Appellants arrive at this conclusion despite the fact that they state earlier in their brief (p. 18) that "the Washington and Louisiana Statutes were obviously the product of the same draftsmen," and despite that fact that Judge Wisdom states in his dissent (R. p. 100): "Following the passage of the federal Internal Security Act, several states enacted so-called 'Little McCarran Acts' principally among them, Alabama, Louisiana, Michigan and Texas." Surely the appellants would not accuse the draftsmen of the Washington statute or the federal Internal Security Act of having as their purpose the preservation of segregation. See also *Uphaus v. Wyman*, 360 U. S. 72, 79 S. Ct. 1040, 1045; *Yates v. United States*, 354 U. S. 298, 77 S. Ct. 1064, 1071-1072, and *Baggett v. Bullitt*, 84 S. Ct. 1316, 1328-1329, for other state statutes of the same type. o

In setting forth their version of the "legislative history" of the Louisiana Statutes attacked herein, appellants' brief (pp. 22-24) contains glaring inaccuracies.

(b) Legislative History.

o The first Louisiana Communist Control Law was enacted in 1952, not 1954, as appellants state.

Act 506 of 1952, designated as the "Louisiana Communist Control Law," required Communists and members of Communist Front organizations, as listed by the United States Department of Justice, to register with the State Department of Public Safety, provided that Communists' names were not to appear on the ballot and that Com-

munists were not to hold non-elective jobs; and provided that the State Attorney General, the District Attorney, the State Department of Public Safety and all law enforcement officers were to enforce this law.

Act 623 of 1954, designated as the "Louisiana Subversive Activities Act," made it a crime to commit or advocate acts intended to overthrow the government by violence or other unlawful means.

This legislation was adopted in reliance on this Court's approval in 1951 of a Maryland statute of the same type in *Gerende v. Board of Supervisors*, 341 U. S. 56, 71 S. Ct. 565, and not because of any intent to use it to advance the cause of segregation.

R.S. 14:358-374, which constitutes the Louisiana Subversive Activities and Communist Control Law, one of the statutes attacked herein, was enacted as Act 270 of 1962, and was derived from Act 506 of 1952 (the Louisiana Communist Control Law) and Act 623 of 1954 (the Louisiana Subversive Activities Act). A comparison of the 1952 and 1954 Acts with Act 270 of 1962 (R.S. 14:358-374) shows that the 1962 Act is merely a consolidation of the 1952 and 1954 Acts.¹

¹The following sections are derived from the 1952 Act:

Section 358.
Section 359 (1) (2) (3).
Section 360 A, B, C.
Section 361.
Section 362.
Section 363.
Section 364 (7).
Section 365.
Section 374.

The following sections are derived from the 1954 Act:

Section 359 (4) (5) (6) (7) (8).
Section 364 (1) (2) (3) (4) (5) (6).
Section 365.
Section 366 (1) (2) (3).

Although appellants would imply otherwise, the only rewriting of Act 270 of 1962 (R.S. 14:358-374) was to effect a consolidation of the 1952 and 1954 Statutes, and a change in language in order to comply with this Court's decisions in *Penn. v. Nelson*, 350 U. S. 497, 76 S. Ct. 477 (1956) and *Uphaus v. Wyman*, 360 U. S. 72, 79 S. Ct. 1040 (1959).

Act 270 of 1962 (Section 376), contains the following Severability Clause:

"If for any reason any provision of this Act is declared by the Courts to be unconstitutional or invalid, the other separable provisions thereof shall not be thereby affected."

All of the sections and sub-sections of the 1962 Louisiana Subversive Activities and Communist Control Law are, in view of the above Severability Clause, and in view of their origin from two separate statutes (the 1952 and 1954 Acts), clearly separable from one another. This being so, the following language of this Court in *Communist Party of the United States v. Subversive Activities Control Board*, *supra*, 81 S. Ct. 1400-1401, is appropriate and dispositive of the issue that appellants are not entitled to attack the statute in its entirety:

"... This Act, like the one involved there, has a section directing that if any of its provisions, or any of its applications, is held invalid, the remaining

Section 367.
 Section 368.
 Section 369.
 Section 370.
 Section 371.
 Section 372.
 Section 373.
 Section 374.

provisions and other possible applications shall not be affected. The authoritative legislative history clearly demonstrates that a major purpose of the enactment was to regulate Communist-action organizations by means of the public disclosure effected by registration, apart from the other regulatory provisions of the Act. Such is, of course, the very purpose of the severability clause. This being so, our consideration of any other provisions than those of § 7, requiring Communist-action organizations to register and file a registration statement, could in no way affect our decision in the present case. Were every portion of the Act purporting to regulate or prohibit the conduct of registered organizations (or organizations ordered to register) and of their members, as such, unconstitutional, we would still have to affirm the judgment below. Expatriation on the validity of those portions would remain mere pronouncements, addressed to future and hypothetical controversies. . . . But the Party argues that the threat, however, indefinite, of future application of these provisions to penalize individuals who are or become its members, affiliates or contributors, will effectively deter persons from associating with it or from aiding and supporting it. Thus, the provisions exercise a present effect upon the Party sufficiently prejudicial to justify its challenging them in this proceeding. In support of this contention, the Party cites cases in which we have held that litigants had 'standing' to attack a statute or regulation which operated to coerce other persons to withdraw from profitable relations or associations with the litigants. See, e. g., Joint Anti-

Fascist Refugee Committee v. McGrath, 341 U. S. 123, 71 S. Ct. 624, 95 L. Ed. 817; Pierce v. Society of Sisters, 268 U. S. 510, 45 S. Ct. 571, 69 L. Ed. 1070; Buchanan v. Warley, 245 U. S. 60, 38 S. Ct. 16, 62 L. Ed. 149; Truax v. Raich, 239 U. S. 33, 36 S. Ct. 7, 60 L. Ed. 131; cf N.A.A.C.P. v. State of Alabama, 357 U. S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488; Bates v. City of Little Rock, 361 U. S. 516, 80 S. Ct. 412, 4 L. Ed. 2d 480. But these cases purported only to discuss what issues a litigant might raise, not when he might raise them. That a proper party is before the court is no answer to the objection that he is there prematurely. In none of the cases cited was the constitutional issue decided on a record which showed only potential deterrence of association with the litigant on the part of an unnamed and uncounted number of persons . . ."

Another glaring inaccuracy of appellants regarding the history of the attacked legislation concerns Concurrent Resolution No. 27 of 1954, which appellants state contains the following language: "to maintain segregation of the races in all phases of our life in accordance with the customs, traditions and laws of our state." Nowhere in Resolution No. 27 do these words appear. For the convenience of the Court, House Concurrent Resolution No. 27 is quoted in full in Appendix A hereof.

According to the official journal of the House of Representatives of the State of Louisiana at the 17th regular session of 1954, p. 947, House Concurrent Resolution No. 27 was first read on May 27, 1954, was passed in its final form June 10, 1954, and called for a joint legislative

committee to be appointed to draft proposed legislation. At the time that Resolution No. 27 was first read in the House of Representatives, Act 623 of 1954 had already been introduced.

The 1954 Senate Calendar of the Louisiana Legislature, at page 21, shows that Act 623 of 1954 was introduced in the Senate on May 11, 1954, and was finally passed by the Senate on May 23, 1954. The 1954 Louisiana Senate Journal, at page 76, shows that on May 19, 1954, this Act was reported favorably by Robert A. Ainsworth², chairman of the Committee of Judiciary, and the Senate Journal, at page 1701, shows that the Act was passed unanimously.

Act 623 of 1954 had nothing to do with the Joint Legislative Committee created by House Concurrent Resolution No. 27. Although appellants state otherwise, the 1954 Louisiana Subversive Activities Act (Act 623 of 1954) could not have been a product of the Joint Legislative Committee which was created by House Concurrent Resolution No. 27, because the Joint Legislative Committee came into existence after the 1954 Act was already passed by the State Senate.

Another glaring misstatement by appellants is that the Louisiana Joint Legislative Committee on Un-American Activities is the principal State Agency responsible for the "operation, effect, administration, enforcement, and needed revision" of the statutes attacked herein. As authority for this misstatement, appellants' brief cites Louisiana House Concurrent Resolution No. 13 of the regular session of 1960, which created the Joint Legislative

²Now Federal District Judge, Eastern District of Louisiana.

Committee on Un-American Activities. For the Court's convenience, this Resolution is quoted in full in Appendix B hereof.

A comparison of Resolution No. 13 and the Statutes attacked herein show that they are completely independent of one another.

If Resolution No. 13 were judicially attacked and declared invalid, the statutes attacked herein would not be affected. Likewise a judicial declaration of the invalidity of the statutes attacked herein would not prevent the Louisiana Joint Legislative Committee on Un-American Activities from functioning under Resolution No. 13, including the holding of hearings and other appropriate activities.

Nowhere in Resolution No. 13 or in the statutes attacked herein is there any provision making the Louisiana Joint Legislative Committee on Un-American Activities responsible for the "operation, effect, administration, enforcement and needed revision" of the legislation attacked herein. What Resolution No. 13 authorized the Committee to do is to **investigate the facts** relating to subversive groups and, *inter alia*, to **investigate the facts** relating to the manner and extent to which subversive activities affect the "operation, effect, administration, enforcement and needed revision" of laws bearing upon subversive activities. The Louisiana Joint Legislative Committee on Un-American Activities is merely a legislative investigative body with no power whatever of law enforcement. The enforcement of R.S. 14:358-374 is, as provided in R.S. 14:363, vested in the State Attorney General, District or Parish Attorney, the State Depart-

ment of Public Safety and any other law enforcement officer of the State. Resolution No. 13 does not make the Joint Committee on Un-American Activities law enforcement officials but confers upon the committee only investigative powers. The enforcement of R.S. 14:385-388 and R.S. 14:390-390.8 is vested in the usual prosecuting officers of this State, that is, the District Attorney or the Attorney General. The Committee has nothing whatever to do with the enforcement of these statutes. Any press release or statement by the Committee calling for the enforcement of these statutes would not amount to a "threat of prosecution" inasmuch as the Committee has no powers of enforcement.

A further glaring misstatement in appellants' brief, making appellants master of the *non-sequitur*, is that House Concurrent Resolution No. 13 was part of a "segregation package" because it was passed on June 15, 1960, at the same time as laws which were designed to circumvent the impact of *Brown v. Board of Education* and subsequent opinions invoking the equal protection laws.

The 1960 Louisiana Senate Journal, at pages 751-753, reveals that Resolution No. 13 was sponsored by Senator Robert A. Ainsworth, and on page 887, that it was concurred in unanimously by the Senate on June 9, 1960.

The May 25, 1960, statement quoted on page 24 of appellants' brief, attributed to the Joint Legislative Un-American Activities Committee, has nothing to do with that Committee. The Joint Legislative Committee, established by House Concurrent Resolution No. 27 of 1954, and the Joint Un-American Activities Committee, established by House Concurrent Resolution No. 13 of 1960,

are two distinct and separate entities. Because the New Orleans Times-Picayune of May 25, 1960, reported that the Joint Legislative Committee of 1954 stated that the espousal of integration in the South is a primary goal of the Communist Party, appellants conclude that this statement must be attributed not only to the Joint Legislative Committee on Un-American Activities, a distinct entity, but also to the entire legislature of Louisiana. From the mere press release, without legal consequences, of one legislative committee, appellants conclude that the entire Louisiana Legislature viewed the entire area of Communist control as another instrument in its efforts to continue segregation.

In *Masters of Deceit* (Holt & Co. 1958), Chapter 18, entitled "Communism and Minorities", pages 243-252, J. Edgar Hoover discusses the use by the Communist Party of the movement for integration for the Party's own ends. A particularly significant paragraph is the following which appears on page 243:

"In the case of the Negro minority the Comintern began in 1928 to lay down a specific Party line for the guidance of comrades in the United States. According to Comintern instructions, Negroes were to be considered as an 'oppressed race.' The Party was told to carry on a struggle 'for equal rights' but 'in the South . . . the main Communist slogan must be: The Right of Self-Determination of the Negroes in the Black Belt'."

See also *Draper, The Roots of American Communism* (Viking Press 1957), p. 387.

Surely the appellants would not accuse Mr. Hoover or Mr. Draper of viewing the entire area of Communist

Control as another instrument in an effort to continue segregation.

Referring again to the 1960 Louisiana Senate Journal for June 15, 1960 (pages 882-965), we find that a vast range of legislation was considered by that body on June 15, 1960, the date on which House Concurrent Resolution No. 13 was signed. Immediately following the action taken on House Concurrent Resolution No. 13, one finds House Concurrent Resolution No. 32, which concerned a deep water industrial canal. Then follows House Concurrent Resolution No. 53 concerning an intra-coastal canal in New Orleans. On the same day there are reported appropriation acts, public assistance acts, Wild Life Acts, and a host of others. Can all or any of these laws, simply because they were passed by a legislature which also enacted a "Segregation Package" be subject to attack as having been designed as additional weapons in Louisiana's battle to retain segregation? If so, this would be extending the discredited doctrine of Guilt-by-Association to statutory construction. Such a conclusion would also effect a method of thought control. That is, those states in which the prevailing views of the majority of its citizens do not agree at any given time with the national view would be punished by the federal Court for the views of its citizens by a presumption that all of its laws passed at the time of disagreement were enacted to circumvent the national view.

It is respectfully submitted that this Court should repudiate appellants' Guilt-by-Association argument as, at best, a colossal *non-sequitur*, and at worst a doctrine dangerous to our fundamental liberty.

- (c) ***Baggett v. Bullitt* Distinguished; the Louisiana Subversive Activities and Communist Control Law Prohibits Acts or Advocacy of Violent Overthrow of Government and Active Membership in Organizations Which Engage in or Advocate Violent Overthrow of Government.**

The decision of this Court in *Baggett v. Bullitt*, 84 S. Ct. 1316, is not dispositive of the questions here presented and does not dispose of the issue of the constitutionality on their face of the Louisiana statutes challenged herein. In *Baggett v. Bullitt* this Court held that a 1955 Washington Statute which required professors at the state university to take a loyalty oath that they were not subversive persons and not members of the Communist Party was void on its face because of vagueness. Academic freedom (which is not involved herein) was at stake, and this Court pointed out that the oath required a teacher to "swear that he is not a subversive person; that he is not one who commits an act or who advises, teaches, abets or advocates by any means another person to commit or aid in the commission of any act intended to overthrow or alter or to assist in overthrow or alteration of the Constitutional form of government by revolution, force or violence".

Because teachers were involved, this Court interpreted the word "teach" in its dictionary sense, rather than as the term of art, carrying a special meaning implying action, that it has been since *Gitlow v. New York*, 268 U. S. 652, 45 S. Ct. 625 (1925). See *Yates v. United States*, 354 U. S. 298, 77 S. Ct. 1064, 1077.

This Court further found that the Washington Subversive Activities Act of 1951, part of which was incor-

porated by reference in the 1955 oath requirement, declared that the Communist Party was a subversive organization and membership therein a subversive activity. From these premises the Court concluded that under the 1955 Washington Act, any person who aided the Communist Party or who taught or advised known members of the Communist Party, was a subversive person, because at some future time such teachings or advice which adds to the knowledge of the Party or its members, might aid the activities of the Communist Party. The Court also found that the 1955 Washington statute required an oath which incorporated, as a definition of a subversive person, one who advocated alteration by peaceful, lawful revolution, not necessarily as a result of force or violence. Based upon all of these premises this Court held that the 1955 Washington Statute which required a loyalty oath was unconstitutionally vague.

The 1951 Washington Subversive Activities Act was not declared unconstitutional by this Court in *Baggett v. Bullitt*. This Court was concerned only with the 1955 Act prescribing a loyalty oath for Washington professors.

Appellants' statement in their brief (page 18) that the Louisiana Legislature established the identical scheme as the Washington statute, which was struck down in *Baggett v. Bullitt*, is misleading. The Louisiana legislation does not provide that the Communist Party is a subversive organization. R.S. 14:358 defines the world communist **movement** or communist conspiracy. R.S. 14:359 (5) defines a subversive organization, and R.S. 14:359 (2) gives a separate and legally distinct definition of the Communist Party. Under these definitions the Communist Party is not necessarily a subversive organization, and mere mem-

bership in the Communist Party does not necessarily make one a subversive person. To be a subversive **person**, one must meet the definition set forth in R.S. 14:359 (8). While the phrase "by any means" appears in the definition of "subversive person", it does not appear in the definition of "subversive organization."

Like the federal Smith Act (18 U.S.C. 2385), the Louisiana Subversive Activities and Communist Control Law prohibits as "subversive" the engaging in, or assisting in, or advocating of **action** to overthrow government by force or violence, and the knowing, active membership in an organization engaged in such action. R.S. 14:364 (1) through (6). See *Gerende v. Board of Supervisors*, *supra*; *Dennis v. United States*, 341 U. S. 494, 71 S. Ct. 857; *Yates v. United States*, *supra*, 77 S. Ct. 1077; *Scales v. United States*, 367 U. S. 203, 81 S. Ct. 1469, 1482-1484. The Louisiana legislation does not go beyond overthrow by force, violence, or unlawful (as opposed to peaceful) revolution. The "advocacy" or "teaching" of the violent overthrow of government which it prohibits means the advocacy of action (not abstract thought) to accomplish the overthrow of government, by language reasonably calculated to incite persons to such as speedily as circumstances would permit. It reaches only present advocacy of action for violent overthrow. See *Yates v. United States*, *supra*; *Noto v. United States*, 367 U. S. 291, 81 S. Ct. 1517, 1521 (1961). The Louisiana statute is couched in "terms of art" which have been previously construed to mean violent overthrow of government, advocacy of action to accomplish violent overthrow, and active, knowing membership in an organization engaging in such action. *Gitlow v. New York*, *supra*; *Yates v. United States*, *supra*, at pp. 1072, 1077;

Dennis v. United States, supra; Scales v. United States, supra.

In order for the penal provision of R.S. 14:364 (4), (5), or (6) to apply, the State would have to prove, not merely, that the subversive organization referred to therein was the Communist Party, but that it was an organization which engaged in, or advocated, or aided action intended to overthrow the constitutional form of government of the State of Louisiana by unlawful revolution, force, or violence,³ as provided in R.S. 14:359(5). It was the declaration in the Washington statute that the Communist Party was a subversive organization, and that mere membership therein was subversive activity, which was an essential element in the decision in *Baggett v. Bullitt*.

Another distinction between the Louisiana legislation and the Washington statute is that in the Washington statute the definition of subversive organization extended to one advocating alteration "by revolution," which the Court interpreted as, including any peaceful fundamental change. In R.S. 14:359 (5), the word "revolution" is modified by the word "unlawful". An unlawful revolution is not a peaceful revolution, but a violent or forceful revolution.

³Even if the committee's declaration (referred to on pp. 27 and 28 of appellants' brief) that the Southern Christian Leadership Conference and the Student Non-Violent Coordinating Committee were substantially under the control of the Communist Party had any legal effect, which it does not, such "substantial control by the Communist Party" by itself would not constitute a crime under R.S. 14:364, would not make the organizations "proscribed," and would not subject any adherents of the organizations to the penal provisions of the statute. As pointed out above, it is not a crime merely to be a Communist, or to be controlled by Communists. One must, in addition, be proved to engage in, or advocate, or aid action to overthrow the state government by force.

See *Gitlow v. New York*, *supra*, wherein the Court stated:

"The statute . . . does not restrain the advocacy of changes in the form of government by constitutional and lawful means. What it prohibits is language advocating, advising or teaching the overthrow of organized government by unlawful means. These words imply urging to action . . ." (Emphasis supplied.) See also *Whitney v. California*, 274 U. S. 357, 47 S.Ct. 641 (1927).

The Louisiana legislation imposes no criminal penalties for "being a subversive person," although it defines that term in R.S. 14:359 (8).⁴ R.S. 14:364 contains all of the acts which are prohibited as felonies under the Louisiana Subversive Activities and Communist Control Law. Sub-sections (1), (2), and (3) of Section 364 deal with acts to overthrow the Government of the State of Louisiana by unlawful revolution, force or violence and the advocating, aiding or teaching persons to commit such acts under circumstances which would **"constitute a clear and present danger to the security of the State."** See *Schenck v. United States*, 249 U. S. 47, 52; *Dennis v. United States*, *supra*, 71 S. Ct. at pp. 864, 870. Sub-sections (4), (5), and (6) of R.S. 14:365 prohibit the active participation and management or active membership in a subversive organization, knowing that the organization is a subversive organization. Sub-section (7) of R.S. 14:364 requires the registration of any person who is a Communist, or knowingly a member of a Communist Front organization. The terms "subversive", "communist", and "communist-front" have different meanings under the statute. R.S. 14:359, 364.

⁴The only sanction imposed on "subversive persons" is their ineligibility for public office or employment, which is not involved in the present litigation. R.S. 14:369-373.

Thus, membership in a Communist or Communist Front organization is not made a crime in Louisiana. A member of a Communist or Communist Front organization must register with the State Department of Public Safety (R.S. 14:360), and only his willful and knowing failure to register is a felony (R.S. 14:364 (7)), but mere membership as such in a Communist or Communist-front organization is no crime in Louisiana.

Appellants' assertion that the definitions of "subversive organization" and "communist front organization" are inextricably bound together ignores the fact that they are derived from two different statutes, the definition of "subversive organization" coming from Act 623 of 1954, and the definition of "communist front" coming from Act 506 of 1952. (See footnote 1, *supra*.)

In order for a person to commit a crime through membership under the Louisiana legislation, he must be an active member of a subversive organization, knowing that the organization is subversive, which means that he knows that it engages in, aids, or advocates action intended to violently overthrow the state government. But the mere membership in the Communist Party or a Communist Front organization would not make one a member of a subversive organization under the statute without proof that the Party or the Communist Front committed, aided, or advocated action intended to violently overthrow the Government of the State, and the member knew it and actively participated therein.

Appellants' strained construction, seeking to enlarge the application of the Louisiana Subversive Activities and Communist Control Act, so as to make it un-

constitutionally vague, is answered by the following language in *Scales v. United States*, *supra*, 81 S. Ct. at pp. 1483-1484, wherein a narrow construction of similar legislation (the Smith Act) was approved:

"We find no substance in the further suggestion that petitioner could not be expected to anticipate a construction of the statute that included within its elements activity and specific intent, and hence that he was not duly warned of what the statute made criminal. It is, of course, clear that the lower courts' construction was narrower, not broader, than the one for which petitioner argues in defining the character of the forbidden conduct and that therefore, according to petitioner's own construction, his actions were forbidden by the statute. The contention must then be that petitioner had a right to rely on the statute's, as he construed it, being held unconstitutional. Assuming, *arguendo*, that petitioner's construction was not unreasonable, no more can be said than that—in light of the court's traditional avoidance of constructions of dubious constitutionality and in light of their role in construing the purpose of a statute—there were two ways one could reasonably anticipate this statute's being construed, and that petitioner had clear warning that his actions were in violation of both constructions. There is no additional constitutional requirement that petitioner should be entitled to rely upon the statute's being construed in such a way as possibly to render it unconstitutional. In sum, this argument of a "right" to a literal construction simply boils down to a claim that the view of the statute taken below did violence to the congressional pur-

pose. Of course a litigant is always prejudiced when a court errs, but whether or not the lower courts erred in their construction is an issue which can only be met on its merits, and not by reference to a 'right' to a particular interpretation'.

See also *Dennis v. United States*, *supra*, 71 S. Ct. at p. 863, wherein the Court stated:

"One of the bases for the contention that the means which Congress has employed are invalid takes the form of an attack on the face of the statute on the grounds that by its terms it prohibits academic discussion of the merits of Marxism-Leninism, that it stifles ideas and is contrary to all concepts of a free speech and a free press. Although we do not agree that the language itself has that significance, we must bear in mind that it is the duty of the federal courts to interpret federal legislation in a manner not inconsistent with the demands of the Constitution. *American Communications Ass'n v. Douds*, 1950, 339 U. S. 382, 407, 70 S. Ct. 674, 688, 94 L. Ed. 925. We are not here confronted with cases similar to *Thornhill v. State of Alabama*, 1940, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093; *Hernon v. Lowry*, 1937, 301 U. S. 242, 57 S. Ct. 732, 81 L. Ed. 1066; and *DeJonge v. State of Oregon*, 1937, 299 U. S. 353, 57 S. Ct. 255, 81 L. Ed. 278, where a state court had given a meaning to a state statute which was inconsistent with the Federal Constitution. This is a federal statute which we must interpret as well as judge. Herein lies the fallacy of reliance upon the manner in which this Court has treated judgments of state courts. Where the stat-

ute as construed by the state court transgressed the First Amendment, we could not but invalidate the judgments of conviction." (Emphasis supplied.)

In the case at bar, there has been no construction by a state Court of the legislation attacked herein which transgresses the First Amendment. On the contrary, all state Court action in the case at bar has fully protected appellants' constitutional rights.

In *Yates v. United States*, *supra*, 77 S. Ct. at pp. 1072-1073, this Court stated:

"We are thus left to determine for ourselves the meaning of this provision of the Smith Act, without any revealing guides as to the intent of Congress. In these circumstances we should follow the familiar rule that criminal statutes are to be strictly construed . . ."

"... this statute should be read 'according to the natural and obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending its operation'. *United States v. Temple*, 105 U. S. 97, 99, 26 L. Ed. 967".

On the other hand, "Judicial enlargement of a criminal act by interpretation is at war with a fundamental concept of common law that crimes must be defined with appropriate definiteness". *Pierce v. United States*, 314 U. S. 306, 311, 62 S. Ct. 237, 239, "If a State Legislature is barred by the *Ex Post Facto* clause from passing such a law, it must follow that a State Supreme Court is barred by the Due Process Clause from achieving the same result

by judicial construction". *Bowie v. City of Columbia*, 84 S. Ct. 1697, 1702. If a State Supreme Court is barred by due process from enlarging a statute by judicial construction, it must follow that the federal Courts are likewise barred.

In the case at bar, the construction of the Louisiana Subversive Activities and Communist Control Law urged upon this Court by appellants would be such an unlawful enlargement by judicial construction.

(d) Registration Provisions of the Louisiana Subversive Activities and Communist Control Law.

As pointed out above, the Louisiana Subversive Activities and Communist Control Law does not make it a crime to be a Communist or, to belong to the Communist Party or a Communist Front organization. The statute requires that Communists, or persons who are knowingly members of a Communist Front organization shall register with the State Department of Public Safety. R.S. 14:360. Knowing and willful failure to register is a felony. R.S. 14:364 (7).

Appellants state that registration provision of R.S. 14:360 and the penal sanctions for failure to register violates the due process clause, citing *Aptheker v. Secretary of State*, 84 S. Ct. 1659. They further state that R.S. 14:360 contains the same vice as Section 6 of the Communist Control Act struck down by this Court in the *Aptheker* case. Appellants' claim is in error because Section 6, which was invalidated in the *Aptheker* case, applies whether or not the member actually knew that he was associated with a Communist-Action or Communist-Front organization. Section 6 also established an irrebuttable

presumption that persons who were members of Communist-Action or Communist-Front organizations would, if given passports, engage in activities harmful to the Nation's security. By contrast, R.S. 14:360 applies only to persons who are knowingly members of Communist Front organizations, and R.S. 14:364 (7) applies only to persons who knowingly and willfully fail to register. R.S. 14:359 (3) does not set up an irrebuttable presumption as does Section 6 of the Federal Control Act, but provides only that the designation, by the named Federal agencies, of an organization as Communist or Communist Front shall be presumptive evidence of the factual status of the organization. This is merely a rule of evidence; it is not an irrebuttable presumption; while it is reasonable to presume that any organization designated by the named federal agencies is potentially subversive, any person affected has a right to show that the organization in question was not in fact a Communist Front organization.

In the *Aptheker* case, *supra*, 84 S. Ct. at page 1667, the Court quoted with approval, the following views of the Department of Justice:

"A world of difference exists from the standpoint of sound policy and Constitutional validity between making, as the bill would, membership in an organization designated by the Attorney General a felony and recognizing such membership . . . as merely one piece of evidence pointing to possible disloyalty".

The Court also pointed out in the *Aptheker* case, *supra*, 84 S. Ct. at page 1667, that the abridgement of liberty which was involved in the case (deprivation of passports) was more drastic and distinguishable from that involved in

American Communications Association v. Douds, 339 U. S. 382, 70 S. Ct. 674, wherein trade union access to the facilities of the National Labor Relations Board was conditioned upon submission of non-Communist affidavits by officers of the Union. This Court made the observation that although the requirements in the *Douds* case discouraged unions from choosing officers with communist affiliations, it does not affect their basic individual right to work and to union membership.

In the case at bar, the registration provisions do not involve, and are therefore distinguishable from, the drastic abridgement of liberty (prohibition of travel) which was involved in the *Aptheker* case, *supra*. The registration requirements do not prohibit anyone from traveling into and out of the State of Louisiana.

In the case at bar there is a rational connection between the presence in the state of members of the Communist Party or Communist Front organizations, and the danger thereby presented to the State's security which is to be averted by the registration provision of the Louisiana statute. In the *Aptheker* case, *supra*, the *nexus* between mere membership in the Communist Party and the danger to be averted by the deprivation of passports was lacking. As the Court pointed out in the *Aptheker* case, *supra*, 34 S. Ct. at page 1668:

"The prohibition against travel is supported by a tenuous relationship between the bare fact of organizational membership and the activity Congress sought to proscribe".

The history of the Communist movement and the Legislative history of the Louisiana statute make it clear

that the Louisiana Legislature desired information about and a way of regulating potentially subversive persons within its borders. The registration requirements relate directly to the legislative area of interest, that is, the presence of potentially subversive persons within the State, born of the legislative determination that the Communist movement posed a serious threat to the security of the State of Louisiana. As this Court stated in *Uphaus v. Wyman*, *supra*, 79 S. Ct. at page 1046:

"Certainly the investigatory power of the State need not be constricted until sufficient evidence of subversion is gathered to justify the institution of criminal proceedings".

The registration provisions were enacted in the interest of the State's self-preservation, "the ultimate value of any society". *Dennis v. U. S. supra*, 71 S. Ct. at page 867.

While compliance with the registration provisions will result in exposing the fact that certain persons are Communists or members of Communist Front organizations, this is the inescapable incident of the State's right to determine whether potentially subversive persons are present in the State. As the Court stated in *Uphaus v. Wyman*, *supra*, 79 S. Ct. at page 1046:

"... the governmental interest in self-preservation is sufficiently compelling to subordinate the interest in associational privacy."

Appellants' arguments concerning the registration provisions of the Louisiana legislation have been answered by this Court in *Communist Party of the United States v.*

Subversive Activities Control Board, supra, 81 S. Ct. at pp. 1414-1415 as follows:

"Where the mask of anonymity which an organization's members wear serves the double purpose of protecting them from popular prejudice and of enabling them to cover over a foreign-directed conspiracy, infiltrate into other groups, and enlist the support of persons who would not, if the truth were revealed, lend their support, see § 2(1), (6), (7), it would be a distortion of the First Amendment to hold that it prohibits Congress from removing the mask . . .

"It is argued that if Congress may constitutionally enact legislation requiring the Communist Party to register, to list its members, to file financial statements, and to identify its printing presses, Congress may impose similar requirements upon any group which pursues unpopular political objectives or which expresses an unpopular political ideology. Nothing which we decide here remotely carries such an implication. The Subversive Activities Control Act applies only to **foreign-dominated** organizations which work primarily to advance the objectives of a world movement controlled by the government of a **foreign** country. See §§ 3(3), 2(4). It applies only to organizations directed, dominated, or controlled by a **particular** foreign country, the leader of a movement which, Congress has found, is 'in its origins, its development and its present practice, * * * a world-wide revolutionary movement, whose purpose it is, by treachery, deceit, infiltration into other groups * * *,

espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization'. § 2(1). This is the full purported reach of the statute, and its fullest effect. There is no attempt here to impose stifling obligations upon the proponents of a particular political creed as such, or even to check the importation of particular political ideas from abroad for propagation here. The Act compels the registration of organized groups which have been made the instruments of a long-continued, systematic, disciplined activity directed by a foreign power and purposing to overthrow existing government in this country"

Appellants' discussion of *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123, 71 S. Ct. 624 is in error. This case cannot be cited as authority for the proposition that the imposition of sanctions based upon *ex parte* designations of alleged subversive organizations violates due process. Three justices dissented in this case, and two justices were of the opinion that the case should have been decided on procedural rather than constitutional grounds.

Appellants' discussion of *Nastrand v. Balmer*, 335 P. (2d) 10, is also in error. In that case Section 3 of the Washington Subversive Activities Act provided that membership in a **subversive** organization shall be membership in any organization after it has been placed on the list of organizations designated by the U. S. Attorney General as being subversive pursuant to Executive Order No. 9835.

In declaring Section 3 of the 1951 Washington Subversive Activities Act invalid, the Washington State Court pointed out that Executive Order No. 9835 had been specifically revoked by Executive Order No. 10450, almost two years before Section 3 was enacted. The Court's holding was predicated upon the fact that Section 3 purported to adopt findings of the Attorney General promulgated pursuant to an Executive Order which had been revoked prior to the enactment of Section 3. The Court stated:

"We cannot, under the guise of judicial interpretation, interject Executive Order No. 10450 (and the due process procedure provided for the listing of subversive organizations thereunder) into Section 3, contrary to the expressed terms thereof".

Appellants' argument that the registration requirements violate the privilege against self-incrimination, ignores the fact that the Louisiana statute does not make it a crime to be a Communist or to be a member of a Communist Front organization. The registration requirements do not use the term "subversive organization". No criminal penalties are attached to mere membership in Communist, Communist controlled, Communist infiltrated or Communist Front organizations, and registration as a member thereof would not incriminate a person as he would not be guilty of a crime.

(e) The Communist Propaganda Control Law.

Appellants have attacked the Louisiana Communist Propaganda Control Law as unconstitutionally vague. However, as there exists no threat of prosecution of appellants by law enforcement officials under this statute, its constitutionality is not an issue. See subpoint "a", *supra*.

However, in the event that this Court should consider the constitutionality of this Act, *Gitlow v. New York*, *supra*, disposes of the issue. A similar statute was involved in the *Gitlow* case, and the Court upheld its validity. Under the *Gitlow* decision the Louisiana Communist Propaganda Control Law is constitutional.

(f) The Statutes are Valid Exercise of the Right of Louisiana to Self Preservation.

The statutes are an exercise of the right of Louisiana to "self preservation" and a further attempt of her people to be fully protected and this is necessarily a constant task, as well as that of the United States.

Just as Louisiana Revised Statutes R. S. 14:113 Treason; 14:114 misprision of treason; 14:115 criminal anarchy; 52:201 sabotage are "unlimited and indiscriminate sweep" against the unlawful perpetrating of these crimes, so is the instant statute against its violators.

Of course those statutes must be administered affording all of the constitutional rights of those who find themselves at the criminal bar accused of transgression.

The mere fact of self declaration on the part of appellants that they champion the cause thousands of negro and white citizens who seek enforcement of constitutional rights does not establish unanimity and license to violate state law or the panoply of federal laws in this area.

Such a declaration here does not form a basis of jurisdiction for federal Courts in the administration of state law in state Court prosecutions, wherein all of ap-

pellants' rights can be, and similar persons' rights are asserted and maintained every day of the week.

Appellants confess with vigor, enthusiasm and zeal that they are extolling the cause of thousands of negro and white citizens of the state of Louisiana who seek enforcement of the Fourteenth and Fifteenth Amendments, in order to say that, there because no penal statute will lie against any of their activities. Appellants have been indicted by a grand jury of their peers, no less than serious accusation, that their activities are otherwise, and in violation of criminal law.

The statute in question is no less narrowly drawn, by way of example, than Louisiana's criminal laws on obscenity which have survived the test appellants urge here.

See *State v. Roufa*, 129 So. (2d) 743, 241 La. 474:

"... That there may be marginal cases in which it is difficult to determine the side of the line on which a fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense."

Roth v. United States, 354 U. S. 476, 77 S. Ct. 1304, 1312, 1 L. Ed. (2d) 1498.

In matters of Obscenity rights under the First Amendment both of freedom of speech and assembly are limited and such rights must give way to the preservation of social conduct, law, order and morality.

The legislative purpose of R.S. 14:358 through 14:388, R.S. 14:390 through 14:390.5 is clearly enunciated

in R.S. 14:358 and R.S. 14:390 in protection of the state which is none other than that same purpose sought by the United States in the enactment of the Smith Act, 1948, the Internal Security Act, 1950, the Communist Control Act, 1954, however, in protection of the Federal Government.

The same argument urged here against the state would be equally valid against the United States in having subsequently twice enacted legislation in the same area, having considered previous enactments less than ample in the Federal Government's and people's desire to maintain full "self preservation".

(g) The Statutes Do Not Violate Any Right Guaranteed by the Fourteenth Amendment.

The Louisiana Statutes are not violative of the Due Process Clause of the Fourteenth Amendment.

Appellants' argument in this attack is as equally without fact and substance and seeks recognition by conclusion not deserved. They say enactment and enforcement of the statutes are "merely another in many recent attempts to utilize the legislative power of certain of the Southern States to hamper, etc.," the civil rights movement. This is incorrect and stated boldly without substantiation.

The appellees are well aware of the authorities cited by appellants in support of this contention. They find all of these inapposite to the facts of this case.

In this argument appellees simply generalize in fiction re-urging, in general, ulterior motive, design and purpose.

The indictments of appellants as set out in Appendix "B" of their brief clearly show how this statute is being administered and enforced against them.

All these arguments have been disposed of elsewhere in this brief.

ARGUMENT.

Point II.

The Louisiana Anti-Subversive Laws Have Not Been Superseded by Federal Legislation.

"The Louisiana anti-subversive laws have been superseded by federal legislation". (Appellants' brief p. 54.)

On this issue both appellants and *amicus curiae* the American Civil Liberties Union fail to recognize the explicit and specific intent of *Uphaus v. Wyman*, 360 U. S. 72. They urge that *Uphaus* in no way altered *Pennsylvania v. Nelson*, 360 U. S. 497 (which is in itself a true statement) and that *Uphaus* "did no more than confirm the legality of state investigations of sedition and that it left Nelson undisturbed in so far as state prosecutions are concerned". (*Amicus* brief p. 13.) The *Uphaus* decision could not have been clearer on this issue! It said, in explaining and affirming *Nelson*, that,

"The opinion [*Nelson*] made clear that a State could proceed with prosecutions for sedition against the State itself . . ." (360 U. S. 76.)

This point was emphasized in the *Uphaus* opinion as a prime factor therein. The Court in *Uphaus* stated clearly,

"the basis of Nelson thus rejects the notion that it stripped the States of the right to protect themselves." (360 U. S. 76.)

The State of Louisiana specifically designed the questioned statute to comply with the doctrines of the *Nelson* case and the *Uphaus* case, making a sincere effort to revise its laws to comply with the interpretations of the Constitution by this Court. So far as counsel has been able to determine, **not one** of the many cases cited by appellants or in the dissenting opinion in the district Court as authority under the *Nelson* doctrine arose out of a State statute specifically designed to comply with the decisions in *Nelson* and *Uphaus*! Appellants allege that the recent case of *Baggett v. Bullitt*, 84 Sup. Ct. 1316, 377 U. S. 360 "has in effect overruled *Uphaus*". (Appellants' brief p. 71.) This cannot be so, because the *Baggett* case dealt with a statute enacted in 1955 whereas the *Uphaus* case was decided in 1959. The Louisiana Statute was enacted in 1962. Had the Washington statute in *Baggett* been revised and re-enacted to conform to the *Nelson* and *Uphaus* doctrine, as was the Louisiana statute, the issue in *Baggett* would have been totally different and likely resolved differently. During argument of the instant case, one member of the district Court commented from the bench that "whoever drafted the Louisiana statute must have had the *Uphaus* decision open before him", and this was in fact a correct observation.

The Louisiana statute is clearly **not** directed at the "same conduct" as the federal legislation, and even if it were, there is no valid reason why there could not be concurrent jurisdiction in this field as there is in so many other criminal matters. The Louisiana statute does make

reference to the "international Communist conspiracy", but the prohibited acts set forth in the statute and the definition of a "subversive organization" deal strictly with acts against the State of Louisiana. This is **not** a violation of *Nelson*, and is clearly within the *Uphaus* doctrine.

The district Court considered the precise point of whether *Uphaus* sanctioned "parallel state legislation" in protecting the State from sedition, and quoted at length from the *Uphaus* decision. (Transcript of record p. 71.) On the basis of this consideration the district Court correctly held,

"thus it would appear that the state may validly proceed with prosecutions of sedition, treason, subversive activities and communist activities, carried on within the State and directed at the State alone," (transcript p. 72).

On this point the district Court cited 73 Harvard Law Review 163, 20 Louisiana Law Review 599, 28 George Washington Law Review 461, and 38 Texas Law Review 334, all interpreting both *Nelson* and *Uphaus* in this same manner.

There is no reason why the *Uphaus* case should be construed to be in conflict with *Nelson*. It interprets and indeed affirms *Nelson*! Concurrent Federal—State jurisdiction exists in many types of crimes such as narcotics violations, bank robberies, kidnappings, possession of switch blade knives, and many other such matters. The American Bar Association in the report of its Committee on Communist tactics, Strategy and Objectives in 1958, urged most strongly that "careful consideration be given to congressional legislation or judicial construction which will . . . 3.

Restore to the States the right to enforce their own anti-subversive laws". In 1959, the *Uphaus* case substantially carried out just what the American Bar Association hoped for in this respect. Since then, in 1960, J. Edgar Hoover in his pamphlet "One Nation's Response to Communism", particularly encouraged the States to take part in anti-subversive activity. The Louisiana statute, in 1962, followed the decisions of this Court, on both *Nelson* and *Uphaus*, and is in no way preempted by federal legislation because it does not proscribe sedition against the United States. Appellant's argument that there is no area of inquiry or legislation open to the States in regard to Communism is directly in the teeth of both *Nelson* and *Uphaus*.

If this argument of appellants should prevail, what would be the result? J. Edgar Hoover testified two years ago before the House Appropriations Committee that there were **over 200** active Communist Front organizations "many of them national in scope" operating in the United States. To control these groups and do it effectively through federal action alone is impossible, unless we are to have a true "police state". Greater and more centralized federal control in the area of subversion is the quickest possible way to bring about the "gestapo" and "police state" controls which no one wants. Basic law enforcement, control of crime, protection of the citizens and their local institutions, original criminal jurisdiction if you will, must for the main be left to the **States**. If not, the Federal system established in the Constitution is ended, and we are indeed destined for a total change in our form of government.

Another reason to maintain the present doctrine of *Nelson-Uphaus* is that to void it would simply make it impossible for any state to protect itself against subversive

activities of any kind. Appellants and others are already shouting "You can't prosecute us because we are a civil rights group". If Nelson and Uphaus are overturned they could gain total immunity by frankly stating that they are a "Communist Group" and therefore immune from any state action against them! The federal government has a whole agency working solely on control of the narcotics traffic. Yet it cannot be controlled, even with the help of all the states, every one of which has statutes controlling narcotics. If this is so, what would be the result of federal enforcement alone attempting to control the much broader and infinitely more subtle field of subversive activities? Why should the states not participate in this for their own self-protection, particularly when the criteria of enforcement and limitations on enforcement are so carefully spelled out for them in Nelson and Uphaus?

Amicus Curiae American Civil Liberties Union alleges (Brief p. 15) that the "ghost [of Uphaus] haunts the civil rights movement". The doctrines of Uphaus and indeed, of Nelson, have nothing whatsoever to do with the legitimate civil rights movement. These cases and the Louisiana statute in question deal with **subversive organizations**, thoroughly and specifically defined in the statute. (Appellants' brief 3a, quoting the whole statute.) On one point the State of Louisiana and all legitimate civil rights organizations are agreed, that is that the leadership of Communists is not needed in the State of Louisiana, in the field of civil rights or in any other realm. Appellants in this case seek to hide behind the facade of "civil rights". Legislative inquiry in Louisiana by the Joint Legislative Committee On Un-American Activities has developed evidence which led to a legislative determination by the Committee to the effect that appellants are in fact operating

a Communist Front organization which is clearly within the specific provisions of the definition of a "Subversive Organization" set forth in the Louisiana statute. Congressional and legislative investigations of this organization, both before and after the action which precipitated this litigation, developed very well its subversive nature plus the fact that many of its activities and functions had absolutely nothing whatsoever to do with "civil rights" but were instead pure Communist functions, such as defending the twelve Communists convicted under the Smith Act, petitioning for clemency for well identified Communist individuals and open cooperation with several other well identified Communist Front organizations. Much of this activity has been developed and demonstrated by evidence introduced before the Legislative Committee in Louisiana and incorporated herein by reference and attached hereto in the form of reports Nos. 4 and 5 of the Joint Legislative Committee On Un-American Activities of the State of Louisiana, which are attached hereto as Appendix C and D. What this case amounts to primarily is an attempt by certain persons and groups previously publically identified as a part of the Communist Conspiracy, to destroy the police power of the States in the whole field of subversive activities by overthrowing the well-reasoned and constitutionally sound doctrines of both *Nelson* and *Uphaus*. The issue of "civil rights" and the claim to be a "civil rights" organization is a cover story behind which any Communist organization can always seek to hide. The racial issue, **on one side or the other**, is the one issue behind which every single subversive organization in the southern United States is hiding today. It is not necessary for any sincere civil rights worker or organization to operate outside the framework of law, in Louisiana or elsewhere, and many

are operating legally in Louisiana at this time. The *Nelson* and *Uphaus* cases clearly and reasonably fix the Federal—State relationship in the field of subversive activities. The tests applied and the reasoning in both cases is constitutionally sound and thoroughly workable. What appellants seek here is to overthrow the doctrine of **both** cases and set up a **new** doctrine that would literally destroy the effective police power of the states. In the chaos this would produce, Communists and all other varieties of subversive organizations would be able to operate quite freely throughout this country without effective restraint. If their public record of activities in the past is any guide, this is appellants' true goal, irrespective of their stated purpose.

Points III and IV.

Jurisdiction and Abstention.

This Court does not have jurisdiction and if maintained, should abstain from exercising any consideration of these matters.

The issues in this appeal relate to the jurisdiction and injunctive authority of the federal courts.

What this Court is called on to pass upon at this juncture is whether the complaints filed in the court below stated a cause of action on which relief could be granted by that court, and if so, whether the court below had within its discretionary authority the power to defer to the courts of the State of Louisiana.

Appellants address the major part of their argument to the proposition that the state statute under which

the appellants were indicted is unconstitutional, both on its face and as applied to the appellants.

Even if this Court should be convinced that the statute involved here is unconstitutional, this conviction does not give the Court jurisdiction to make this determination unless the court below had jurisdiction to grant the relief requested in the complaint, and unless the court below acted beyond its powers in deferring to the courts of the State. If the Court should decide that the court below acted contrary to law, still, if this Court is not to undertake piecemeal determination of the constitutional issues, it should, in the event it should determine that the court below acted beyond its discretionary authority in dismissing the action, remand the case for determination of the constitutional issues. Although the court below determined at one stage in its consideration of the complaints that the statute was not unconstitutional on its face, its decision was to dismiss the complaint for its failure to state a claim upon which relief could be granted (R. p. 63), on the ground that the injunctive relief requested could not be granted, and that the issue on constitutionality should be left for determination by the state courts in the course of the criminal proceeding, subject to appeal to this Court (R. pp. 72-74). Based on this decision, the court below refused to hear evidence as to whether the statute was unconstitutional as applied to the appellants.

A federal district court cannot by virtue of the Civil Rights Act grant an injunction to stay a criminal prosecution in a state court.

Title 28, Section 2283, of the United States Code, specifically provides that a federal court may not grant

an injunction to stay proceedings in a state court, except as expressly authorized by Act of Congress or when necessary in aid of its jurisdiction, or to protect or effectuate its judgments. The present case is an injunction action against the prosecution of appellants by appellees in the courts of Louisiana under a Louisiana statute.

Section 2283 and its predecessors have been among the most widely litigated federal statutes, due to the sensitive area of federal-state relationships in which they operate. This legislation originated in the Act of March 2, 1893, as an amendment to the statute establishing the federal courts, and provided that no writ of injunction would be granted by a federal court to stay proceedings in any state court. In 1874 a statutory exception was made with respect to bankruptcy proceedings. With only minor changes, the same provision was incorporated into the Judicial Code of 1911 as Section 265. However, in the writing of the Judicial Code of 1948, three exceptions were introduced into Section 2283: (1) express authorization by Act of Congress, (2) where necessary in aid of jurisdiction, and (3) to protect or effectuate judgments.

Certain decisions of this Court had engrafted additional exceptions. In *Wells Fargo & Co. v. Taylor*, 254 U. S. 175, 182, the Court indicated "that it was settled by repeated decisions and in actual practice that when the elements of federal and equity jurisdiction are present, the provision (Section 265) does not prevent the federal courts from enjoining the institution in the state courts of proceedings to enforce local statutes which are repugnant to

the Constitution of the United States." The Court held in *Essanay Film Co. v. Kane*, 258 U. S. 358, 361, that in "exceptional cases the letter (of Section 265) has been departed from while the spirit of the prohibition has been observed."

However, in *Toucey v. New York Life Insurance Co.*, 314 U. S. 118, the Court held that the statute should be strictly construed, and indicated that the foundation of the *Wells Fargo* and *Essanay* decisions was very doubtful. The Court also by indirection cast doubt on two other decisions, *Ex parte Young*, 209 U. S. 123, and *Gunter v. Atlantic Coast Line*, 200 U. S. 273. In 1955, in *Amalgamated Clothing Workers v. Richman*, 348 U. S. 511, 514, the Court said:

"We need not re-examine the series of decisions, prior to the enactment of Title 28 of the United States Code in 1948, which appeared to recognize implied exceptions to the historic prohibition against federal interference with state judicial proceedings. See *Toucey v. New York Life Insurance Co.*, 314 U. S. 118. By that enactment, Congress made clear beyond cavil that the prohibition is not to be whittled away by judicial improvisation. . . . Legislative policy is here expressed in a clear-cut prohibition qualified only by specifically defined exceptions."

The Court referred to the Reviser's Notes in connection with Section 2283, which read as follows:

"An exception as to Acts of Congress relating to bankruptcy was omitted, and the general exception substituted to cover all exceptions."

The Court also held that the fact that exclusive jurisdiction over the cause of action is given by Congress to the federal courts was immaterial.

Appellants argue that at the time the present action was filed, they had not been indicted, and therefore the bar of § 2283 does not apply. The record shows that arrest and search warrants were issued and executed. The arrest warrants were vacated, but no action taken with respect to the search warrants. Appellants learned that copies of the documents seized under the search warrants, which had not been vacated, had been subpoenaed by the Orleans Parish Grand Jury, which had been charged by the presiding judge to investigate appellants and their organization, and filed the present action to enjoin appellees from proceeding under the asserted unconstitutional statute.

Thus this is rather different from the situation in *Ex parte Young, supra*, where the Court did not in its opinion make any more than passing reference to the fact that no "proceedings" had been undertaken at the time of filing of the federal action, without further discussion. The rate order complained of had not even become effective. Here there was at the time the federal suit was filed an outstanding search warrant, an investigation by a grand jury charged by the presiding judge to investigate appellants, and documents subpoenaed for presentation to the grand jury.

The question is whether these actions constitute "proceedings" under Section 2283. In *Hill v. Martin*, 296

U. S. 393, 400, the Court held as to the term "proceedings" as used in Section 265, the immediate predecessor of Section 2283:

"That term is comprehensive. It includes all steps taken or which may be taken in the state court or by its officers from the institution to the close of the final process . . . It applies alike to actions by the court and by its ministerial officers."

The Court cited *Hyattsville Building Association v. Gowie*, 44 App. D. C. 408, 413, where the Court of Appeals for the District of Columbia held that the term "proceedings" referred to "a prescribed course of action for enforcing a legal right and necessarily entails the steps by which judicial action is invoked."

In *Hale v. Henkel*, 201 U. S. 43, 66, this Court said as to grand jury proceedings:

"While there may be some doubt whether the examination of witnesses before a grand jury is a suit or prosecution, we have no doubt that it is a 'proceeding' . . . The word 'proceeding' is not a technical one, and is aptly used by courts to designate an inquiry before a grand jury."

The basis for the grand jury was explained in *Cobbledick v. United States*, 309 U. S. 323, 327, in the following terms:

"The Constitution itself makes the grand jury a part of the judicial process. It must initiate prosecutions for the court to which it is attached and to which, from time to time, it reports its findings."

See also *Society of Good Neighbors v. Groat*, 77 F. Supp. 695, 698 (D.C. Mich., 1948), and *State v. Rodrigues*, 219 La. 217, 52 So. (2d) 756, 758.

Appellants also argue that the Civil Rights Act, which vests jurisdiction in the federal courts to redress Constitutional deprivations, was intended to authorize injunctive relief against state court proceedings. This Court has not passed on the effect of this statute (42 U.S.C. 1983) on the prohibition of Section 2283, and the legislative history provides no indication in this respect. The recent decision of the Fourth Circuit in *Baines v. Danville*, decided August 10, 1964, holds that the conferring of federal jurisdiction to redress civil rights violations is not an exception to the prohibition on injunctions against state court proceedings. See also *Smith v. Lanney*, 241 F. (2d) 856, and *Goss v. Illinois*, 312 F. (2d) 257, decided by the Seventh Circuit, and *Sexton v. Barry*, 233 F. (2d) 220, decided by the Sixth Circuit.

Assuming the existence of jurisdiction to grant injunctive relief against the prosecution of appellants in the state courts, the record in this case does not establish the extraordinary circumstances required before equitable relief will be granted.

Along with the statutory ban on federal injunctive authority over state court proceedings, the federal courts have applied a strict rule of equitable abstention in all but the most extraordinary situations. This Court has held that when equitable interference with state action is sought in federal courts, judicial consideration of acts of importance primarily to the people of the state should as a matter of discretion be left by the federal courts to courts

of the legislating authority, unless exceptional circumstances command a different course. *Stainback v. Ho Hock Ke Lok Po*, 336 U. S. 363, 383.

The court below in the present case decided that under the circumstances of the case, it should not interfere with the state prosecution. Appellants ask this Court to override the discretionary power of the court below and substitute its judgment on the conditions existing at the time and in the judicial district where the court convened.

What are the exceptional circumstances asserted by appellants? It should be noted that there was no hearing on this issue, and at this stage of the proceedings the only inquiry is whether the complaint makes out a *prima facie* case in this respect, subject to proof in the event the Court finds in favor of appellants. The court below would then have the responsibility of making fact findings in this respect.

The complaint alleges that the threats of appellees to enforce the statute were for the sole purpose of deterring, intimidating, hindering, preventing and depriving appellants, their friends, members and supporters, who have been attempting to eliminate racial segregation peacefully through the exercise of their rights to freedom of speech, press, assembly and association, of their constitutional rights (R. pp. 4-5). The complaint of the intervening appellants also asserted that indictment of appellants is calculated to curtail the Civil Rights activities of appellants as effectively as could actual conviction, in that charges and indictments of officers and members of Civil Rights organizations for alleged communist or subversive activity deter many from participation in or contribution

to them, both by those who believe such charges to be true, and by those who know them to be false, the latter as a result of their fear of public embarrassment by popular disapproval of their association with a group so charged; and the fund-raising ability of SCEF would be greatly hampered as would the number of active participants in its programs (R. p. 28). Also the intervening appellants asserted that their law practice, including their ability to handle Civil Rights cases, could be and has been seriously affected adversely as the result of criminal charges or indictment alleging communist or subversive activity, the complete falsity of such charges being of little consequence (R. p. 28).

These asserted consequences of the criminal proceedings against the appellants are of great importance, both to the livelihoods of the individual appellants and the work of SCEF. We as lawyers cannot help but sympathize particularly with the plight of a professional man indicted for commission of a crime. If the constitutionality of the statute under which appellants are indicted could be determined in a civil proceeding where the criminal penalties and atmosphere are not involved, this would certainly ameliorate the hardship to them. But what a precedent would be established! It would necessarily give rise to a race to the courthouses, state and federal, upon any word being received of grand jury investigations under a state statute.

We are all aware of the serious problems existing in the South in the Civil Rights area, but is the existence of this situation ameliorated by the exercise of federal jurisdiction to override state courts, in the absence of any assertion that justice will not be done in the courts of the

state? No such allegation is made herein, and in fact, the action of the judge of the Criminal Court for the Parish of Orleans in summarily vacating the arrest warrants, and of the Supreme Court of the State of Louisiana in declaring the predecessor statute to that involved in this appeal unconstitutional indicates to the contrary. *State v. Jenkins*, 236 La. 300, 107 So. (2d) 648.

Appellants rely largely on the recent cases under the Civil Rights Act as indicating a special situation requiring a jurisdictional precedent. In *Stefanelli v. Minard*, 342 U. S. 117, 121, this Court considered the effect of the Civil Rights Act on its previous position, and concluded:

"Only last term we restated our conviction that the Civil Rights Act 'was not to be used to centralize power so as to repeal the federal system.' *Collins v. Hardyman*, 341 U. S. 651, 71 S. Ct. 937, 940, 95 L. Ed. 1253. Discretionary refusal to exercise equitable power under the Act to interfere with State criminal prosecutions is one of the devices we have sanctioned for preserving the balance."

This view of federal-state relations was followed as recently as the 1962 Term in *Cleary v. Bolger*, 371 U. S. 392, in state criminal prosecutions.

The fact that numerous members of a class are threatened with prosecution is not sufficient to establish extraordinary circumstances. *Douglas v. Jeaxette*, 319 U. S. 157, 165. Nor is the claim of irreparable injury due to the inability to follow one's occupation sufficient. *Stainback v. Mo Hock Ke Lok Po*, *supra*. Only in the event it plainly appears that resort to state proceedings would

not afford adequate protection might extraordinary hardship be established, assuming Section 2283 is no bar. *Fenner v. Boykin*, 271 U. S. 240, 243. The claim of exceptional circumstances in the present case, other than the effect on appellants' activities, is the deterrent effect on the civil rights movement of possible prosecutions on the basis of the statute involved here. The existence of a criminal statute in any area of activity is bound to have an effect, and it is always possible that prosecutors may misuse their authority. There is, however, no indication of large scale prosecutions under this statute, and in such event the federal courts are always open. The prosecution of appellants has been withheld pending the outcome of this appeal, and it can in no event be a long period of time before the issue of the constitutionality of the statute is passed upon by the state courts, subject to review by this Court. Injunctions look to the future, and by the time this Court remanded the case to the court below for the hearing on the extreme hardship issue, such hearing held, and a decision reached, the criminal prosecution and appeal to the State Supreme Court might well be completed. The indictment is effected, and the hardship necessarily resulting in the publicity of that fact has been done. The necessity of submitting to a trial, onerous as it is, is not the basis for a claim of denial of due process. *Wolf v. Colorado*, 338 U. S. 25. Nor is the imminence of prosecution alone a ground for relief in equity. *Beal v. Missouri Pacific Railroad Co.*, 312 U. S. 45.

For the purpose of this appeal the only issue is whether the complaint has stated a cause of action on which relief can be granted. Thus, assuming this Court finds that the court below had authority to grant injunc-

tive relief despite Section 2283, and that the circumstances set forth in the complaint are so extraordinary as to require the court below to proceed to consider the constitutionality of the state statute, the only action this Court should take is to remand the case to the court below for a determination as to whether the extraordinary circumstances can be proven. Until there is a judicial determination of fact in this respect, and a finding that such circumstances do exist to establish the basis for federal jurisdiction, the court below, and this Court, cannot proceed to make a determination on the constitutional issues. *Beal v. Missouri Pacific Railroad Co.*, *supra*. Extraordinary circumstances must be determined on a case-by-case basis. *Baggett v. Bullitt*, 377 U. S. 360, 375. That case, a class action by approximately sixty-four members of the faculty, staff, and student body, raised the jurisdictional issue only of whether a doubtful issue of state law existed requiring construction by a state court. No state criminal action existed, raising the jurisdictional issues involved in the present case.

It might be argued, as posed by Mr. Justice Holmes, that justice requires the cutting of red tape, and that this Court should rule on the constitutionality of the statute before it. *Douglas v. Jeannette*, *supra*, at p. 124. But, as he responded, a great deal more is at stake. The result, as the Court held in the *Douglas* decision, might well be to invite a flanking movement against the system of state courts by resort to the federal forum, unless exceptional circumstances justifying such action are found to exist. In the present case, the Court could only, in any event, consider a part of the constitutional issue, whether the statute is unconstitutional on its face, since no evidence has been

taken on its constitutionality as applied to appellants. Such piecemeal consideration does not accord with proper appellate procedure, or the intention of Congress. *Douglas v. Jeanette*, *supra*, footnote at p. 123.

This appellee would note in concluding that he is nowhere named in the allegations of conspiracy set forth in the complaint herein other than the mere statement that appellees as a group entered into a plan or conspiracy with other persons to deprive appellants of their constitutional rights (R. p. 3). Aside from the failure to state a cause of action against this appellee for conspiracy, it is suggested that the complaint is in the nature of an action against the State and its prosecutive machinery. Cf. *Monroe v. Pape*, 365 U. S. 167.

CONCLUSION.

It is respectfully submitted that the judgment of the court below should be affirmed.

JACK P. F. GREMILLION,
Attorney General;

JOHN E. JACKSON, JR.,
Asst. Attorney General;

(Mrs.) DOROTHY D. WOLBRETTE,
Asst. Attorney General,
104 Supreme Court Building,
New Orleans, Louisiana;

JACK N. ROGERS,
Attorney at Law,
Commerce Building,
Baton Rouge, Louisiana.

CERTIFICATE.**Proof of Service:**

I, John E. Jackson, Jr., Assistant Attorney General, State of Louisiana, one of the attorneys for Appellees herein, and a member of the bar of the Supreme Court of the United States, hereby certifies that on the _____ day of November, 1964, I served copies of the foregoing brief in behalf of Appellees on the several Appellants as follows:

Arthur Kinoy,
William M. Kunstler,
Michael J. Kunstler,
511 Fifth Avenue,
New York, N. Y.

by mailing copies in duly addressed envelopes with airmail postage prepaid.

Milton E. Brener,
.1304 National Bank of Commerce Bldg.,
New Orleans, Louisiana.

A. P. Tureaud,
1821 Orleans Avenue,
New Orleans, Louisiana.

Leon Hubert,
Edward Baldwin,
Robert Zibilich,
300 Oil & Gas Bldg., 1100 Tulane Ave.,
New Orleans, Louisiana.

by mailing copies in duly addressed envelopes with first class postage prepaid.

All of the above counsel are appellants' respective attorneys of record.

John E. Jackson, Jr.;
Asst. Attorney General.

APPENDIX "A"

SENATE COMMITTEE AMENDMENT

Amendment proposed by Senate Committee on Education to House Concurrent Resolution No. 27 by Messrs. Gravolet and Lancaster.

Amend original resolution as follows:

Amendment No. 1—

Delete the first, second, and third paragraphs and substitute in lieu thereof the following:

Whereas the Legislature of Louisiana adopted House Concurrent Resolution No. 22, wherein the Legislature resolved itself to provide ways and means whereby our existing social order shall be preserved, and our institutions and ways of life established by many generations of Louisianians and embodied in our fundamental law shall be maintained; now, therefore,

Be it resolved by the Legislature of Louisiana, the Senate and the House of Representatives concurring, that a Legislative Committee be appointed to draft proposed legislation to carry out the purposes set forth in House Concurrent Resolution No. 22 and hereinabove enumerated which committee shall serve with the authority and powers provided by the constitution of Louisiana; and,

Further resolved that the said Legislative Committee shall be composed of five members of the Senate appointed by the President of the Senate and five members of the House of Representatives appointed by the Speaker of the House of Representatives; and,

Further resolved, that the said Legislative Committee shall have the right and authority to call for the pro-

duction of and to inspect the books and records, and to secure information and compile data, from any of the Institutions and Departments of State Government and parish school boards, which in their judgment may be relevant or helpful in the drafting of such proposed legislation; and the Committee is authorized to secure the services of statistical, clerical, and other assistance from any of the State Institutions or Departments and from Parish School Boards to compile data and to make reports deemed necessary by this Committee to assist in preparing said proposed legislation and submitting such data and reports to the Legislature at the appropriate time; and

On motion of Mr. Gravolet the amendment was concurred in.

House of Representatives
State of Louisiana
Baton Rouge

June 10, 1954

APPENDIX "B"**HOUSE CONCURRENT
RESOLUTION No. 13—**

By Messrs. Pfister, Tessier and A. D. Brown:

A CONCURRENT RESOLUTION

Whereas, this state and this country face grave public danger from enemies both within and without our boundaries, and

Whereas, these subversive groups and persons under the color of protection afforded by the Bill of Rights of the United States Constitution seek to destroy us and the ideals for which we fought to preserve and subject us to the domination of foreign powers and ideologies, and

Whereas, Louisiana, as one of the laboratories of this great country, may study profitably this problem within its boundaries and enact remedial legislation if facts therefor are made available, and

Whereas, necessary and desirable legislation to meet this grave problem and to assist local enforcement officers to be effective must be based on a thorough and impartial investigation by a competent and active legislative committee.

Therefore, Be It Resolved by the House of Representatives of the Legislature of the State of Louisiana, the Senate concurring therein, that there is hereby created the Joint Legislative Committee on Un-American Activities which Committee shall consist of ten members, five to be appointed by the Speaker of the House of Representatives from the membership of the House and five to be appointed by the President of the Senate from the membership of the

Senate which committee shall study, investigate and analyze all facts relating directly or indirectly to the subject expressed in the recitals of this resolution; to the activities of groups and organizations which have as their objectives, or as part of their objectives, the overthrow of the State of Louisiana, or of the United States by force, violence or other unlawful means; to all organizations known to be or suspected of being dominated or controlled by a power seeking to impose a foreign political theory upon the government and people of the United States; to all persons who belong to or are affiliated with such groups or organizations; and to the manner and extent in which such activities affect the safety, welfare and security of this state in National Defense, the functioning of any state agency, unemployment relief and other forms of public assistance, educational institutions in this state including but not limited to the operation, effect, administration, enforcement and needed revision of any and all laws in any way bearing upon or relating to the subject of this resolution.

Be It Further Resolved that the Committee shall have the authority to:

(a) Select a chairman and a vice chairman from its membership, and to employ and fix the compensation of a secretary and such clerical, investigative, expert and technical assistants as it may deem necessary.

(b) Contact and deal with such other agencies, public or private, as it may deem necessary for the rendition and affording of such services, facilities, studies and reports as will best enable the committee to carry out the purposes for which it is created, and to rent and maintain office and storage space and equipment for the conduct of its business and the maintenance of its files and records.

(c) Cooperate with and secure the cooperation of parish, city, city and parish, and other local law enforcement agencies in investigating any matter within the scope of this resolution,

(d) Cooperate with and meet with similar committees of other states and of the Federal Government, or representative thereof, outside of this state, and expenses necessarily incurred in connection therewith by any of the members or staff of the committee, thereunto duly authorized by the chairman, shall constitute a proper charge against the sums allocated to the committee,

(e) Do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objects and purposes of this resolution, and

(f) Adopt and from time to time amend such rules governing its procedure as may appear appropriate.

Be It Further Resolved that every department, commission, board, agency, officer and employee of the State Government of Louisiana and of any political subdivision, parish, city or public district of or in this state, shall furnish the committee and any subcommittee, upon request, any such information, records and documents as the Committee or subcommittee deems proper for the accomplishment of the purposes for which the committee is created.

Be It Further Resolved that the committee shall have the power and authority to hold hearings at any place in Louisiana, which meetings may be public or private, to subpoena witnesses, administer oaths, require the production of books and records and to do all other things necessary to accomplish the purposes of this resolution.

Be It Further Resolved that the committee shall have the power to punish for contempt and to provide for the prosecution of any individual who is guilty of refusal to testify, false swearing or perjury before the committee in accordance with the laws of this state.

Be It Further Resolved that the committee shall submit its findings and recommendations to the Legislature at each of its regular sessions and at such other times as the committee may deem necessary and desirable.

Be It Further Resolved that the members of the committee created herein shall receive the same per diem and travel allowance in the performance of their duties as is provided for members of the Legislature.

Be It Further Resolved that the per diem and travel allowance herein authorized and all other expenses incurred by the committee shall be paid out of funds available to the presiding officers of the two houses of the Louisiana Legislature for expenses of the Legislature and Interim Committees.

and ask that the Lieutenant Governor and President of the Senate affix his signature to the same, in open session and without delay.

Respectfully submitted,

W. CLEGG COLE,

Clerk of the House of Representatives

APPENDIX "C" and "D", reports 4 and 5 of the Joint Legislative Committee on Un-American Activities of the State of Louisiana are supplied under separate cover.

No. 52

JANUARY 19, 1965

REPORT No. 6

The
Joint Legislative Committee on
Un-American Activities

STATE OF LOUISIANA



Office-Supreme Court, U.S.
FILED

JAN 25 1965

JOHN F. DAVIS, CLERK

Hon. John J. McKeithen
Governor

**"ACTIVITIES OF THE SOUTHERN CONFERENCE
EDUCATIONAL FUND, INC.
IN LOUISIANA"**

PART 3

The Joint Legislative Committee on Un-American Activities

STATE OF LOUISIANA



**Hon. John J. McKeithen
Governor**

**"ACTIVITIES OF THE SOUTHERN CONFERENCE
EDUCATIONAL FUND, INC.
IN LOUISIANA"**

PART 3

*Prepared and released by the
Joint Legislative Committee On Un-American Activities,
State of Louisiana
Old State Capitol,
Baton Rouge, Louisiana*

**JOINT LEGISLATIVE COMMITTEE ON
UN-AMERICAN ACTIVITIES**

Senator Jesse M. Knowles, Chairman

Allen, Beauregard, Calcasieu, Cameron, Jefferson, Davis

Representative Ford E. Stinson, Vice Chairman

Bossier

Senator Fieldon H. Mitchell

Livingston, St. Helena, Tangipahoa

Senator Harold Montgomery

Bossier, Webster

Senator Danny R. Moore

Bienville, Claiborne

Senator W. Spencer Myrick

Morehouse, West Carroll

Representative Bert A. Adams

Vernon

Representative S. S. DeWitt

Tensas

Representative Herman B. Schoenberger

Plaquemines

Representative T. J. Strother

Allen

Jack N. Rogers, Committee Counsel

Col. Frederick B. Alexander, Staff Director

SENATE CONCURRENT RESOLUTION No. 12

REGULAR SESSION, 1964

A CONCURRENT RESOLUTION

By: Messrs. Knowles, Tessier, Davis, Poston, Broussard, Montgomery, and Reps. Hogan, Cooper and McMillian

WHEREAS, this state and this country face grave public danger from enemies both within and without our boundaries, and

WHEREAS, these subversive groups and persons under the color of protection afforded by the Bill of Rights of the United States Constitution seek to destroy us and the ideals which we fought to preserve and subject us to the domination of foreign powers and ideologies, and

WHEREAS, Louisiana, as one of the laboratories of this great country, may study profitably this problem within its boundaries and enact remedial legislation if facts therefor are made available, and

WHEREAS, necessary and desirable legislation to meet this grave problem and to assist local enforcement officers to be effective must be based on a thorough and impartial investigation by a competent and active legislative committee.

THEREFORE, BE IT RESOLVED by the Senate of the Legislature of the State of Louisiana, the House of Representatives concurring therein, that there is hereby created the Joint Legislative Committee on Un-American Activities, which Committee shall consist of ten members, five to be appointed by the Speaker of the House of Representatives from the membership of the House and five to be appointed by the President of the Senate from the membership of the Senate, which committee shall study, investigate and analyze all facts relating directly or indirectly to the subject expressed in the recitals of this resolution; to the activities of groups and organizations which have as their objectives, or as part of their objectives, the overthrow or destruction of the State of Louisiana by force, violence or other unlawful means; to all organizations known to be or suspected of being dominated or controlled by a power seeking to impose a foreign political theory upon the government and people of the State of Louisiana, and all organizations

seeking by force, violence or other illegal means to deprive any citizens of the State of Louisiana or the State of Louisiana itself from the rights guaranteed to the citizens and the States by the Constitution of the United States; to all persons who belong to or are affiliated with such groups or organizations; to the manner and extent in which such activities affect the safety, welfare and security of this state and the citizens of this state in National Defense, the functioning of any state agency, unemployment relief and other forms of public assistance, educational institutions in this state, including but not limited to the operation, effect, administration, enforcement and needed revision of any and all laws in any way bearing upon or relating to the subject of this resolution.

Be It Further Resolved that the Committee shall have the authority to:

(a) Select a chairman and a vice chairman from its membership; and to employ and fix the compensation of a secretary and such legal, clerical, investigative, expert and technical assistants as it may deem necessary.

(b) Contract and deal with such other agencies, public or private, as it may deem necessary for the rendition and affording of such services, facilities, studies and reports as will best enable the committee to carry out the purposes for which it is created.

(c) Cooperate with and secure the cooperation of parish, city, and other law enforcement agencies in investigating any matter within the scope of this resolution,

(d) Cooperate with and meet with similar committees of other states and of the Federal Government, or representatives thereof, outside of this state, and expenses necessarily incurred in connection therewith by any of the members or staff of the committee, thereunto duly authorized by the chairman, shall constitute a proper charge against the sums allocated to the committee.

(e) Do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objects and purposes of this resolution, and

(f) Adopt and from time to time amend such rules governing its procedure as may appear appropriate.

Be It Further Resolved that every department, commission, board, agency, officer and employee of the State Government of Lou-

isiana and of any political subdivision, parish, city or public district of or in this state, shall furnish the committee and any subcommittee, upon request, any such information, records and documents as the Committee or subcommittee deems proper for the accomplishment of the purposes for which the committee is created; provided, however, that this provision shall not extend to, nor shall it be construed to make available to the committee or any subcommittee thereof, any record or other document which under the law is made a confidential record.

Be It Further Resolved that the committee shall have the power and authority to hold hearings at any place in Louisiana, which meetings may be public or private, to subpoena witnesses, administer oaths, require the production of books and records pertinent to any inquiry before the Committee and to do all other things necessary to accomplish the purposes of this resolution.

Be It Further Resolved that the Committee shall have authority to apply to any court of competent jurisdiction for enforcement of any order issued by it for the production of books, records or other documents or to compel the attendance of any witnesses subpoenaed to appear before it and, upon request of the committee, the Attorney General shall prosecute any witness who is guilty of refusal to testify or who gives false testimony, and persons guilty of false swearing or of giving false testimony shall be punished in accordance with the criminal laws of this state relating to false swearing or perjury, as the case may be, and

Be It Further Resolved that the committee shall submit its findings and recommendations to the Legislature at each of its regular sessions and at such other times as the committee may deem necessary and desirable.

Be It Further Resolved that the members of the committee created herein shall serve without compensation but shall receive the same per diem and travel allowance in the performance of their duties as is provided for members of the Legislature.

Be It Further Resolved that the per diem and travel allowance herein authorized and all other expenses incurred by the committee shall be paid out of funds appropriated or otherwise dedicated for the use of the committee; provided, however, that the disbursements for all expenses incurred by the committee, including the payment of per diem and travel allowances for

members as herein authorized shall be approved by the chairman of the committee.

s/ C. C. Aycock

Lieutenant Governor and President of The Senate

s/ Vail M. Delony

Speaker of The House of Representatives

Chair-

Joint Legislative Committee

on

Un-American Activities

State of Louisiana



Hearings held

December 21, 1964

at the Committee Office

Old State Capitol Building

Baton Rouge, Louisiana



Hon. Jesse M. Knowles, *Chairman*

Jack N. Rogers, *Committee Counsel*

**THE
JOINT LEGISLATIVE COMMITTEE
ON
UN-AMERICAN ACTIVITIES
STATE OF LOUISIANA**

**THE MINUTES OF THE HEARING OF THE COMMITTEE,
HELD IN THE COMMITTEE'S OFFICE, OLD STATE CAPITOL
BUILDING, BATON ROUGE, LOUISIANA, MONDAY, DECEMBER
21, 1964, COMMENCING AT 10:00 O'CLOCK A. M.: CHAIR-
MAN, J. M. KNOWLES, PRESIDING.**

* * * * *

BY SEN. KNOWLES:

Gentlemen, the Committee will now come to order. We will open this Committee Hearing with prayer from Senator Moore.

BY SEN. MOORE:

Our Holy Father, we do thank Thee for all of the blessings of life that Thou hast poured out onto us, blessing of health, happiness, and the freedom which we now enjoy as American citizens. Father, we do thank Thee for the privilege of assembling together in this Committee, striving and undertaking to find out facts and to do the things which we feel might guard against these dangers that imperil our nation. Father, we ask Thee to guide each action as we work together here today; we ask Thee to bless each member of this Committee, and bless this Committee, and all of those who seek to further Americanism and the freedom which we, as Americans, have known in the past. Father, we ask Thee to bless each member of the Legislature of this State; we ask Thee to bless our State and our Nation that we might continue to walk closer to Thee day by day; we ask these things in Jesus name, and for His sake. Amen.

BY SEN. KNOWLES:

I now ask our Staff Director, Col. Alexander to call the roll.

BY COL. ALEXANDER:

Representative Stinson, present; Representative Schoenberger,

absent; Representative DeWitt, here; Representative Adams, absent; Senator Knowles, here; Senator Montgomery, absent; Senator Myrick, here; Senator Mitchell, here; Senator Moore, here. Six present, and we have a quorum.

BY SEN. KNOWLES:

Gentlemen, the purpose of this Hearing is to further carry out the mandate to our Committee from the Legislature as set forth in Senate Concurrent Resolution 12, Regular Session of 1964. Our Committee Staff has continued its research into the files and records of the Southern Conference Educational Fund, our Committee counsel having made a study of 800 or more individual documents. Our purpose today is to learn more about the connections of the Southern Conference Educational Fund with the Communist Party and various other organizations. We also seek to learn more about how the Southern Conference Educational Fund operates, how it is financed, and how it recruits people to do the work of the Communists. Our past investigation has given us some detailed information on the personalities who operate the Southern Conference Educational Fund, and some of this information will be brought out again today.

The legislative purpose of this Committee and of this Hearing, specifically, is to learn more about subversive activities in Louisiana, so that we might recommend to the Legislature improvements and modifications of the Louisiana Statutes which are designed to control such activities. Mr. counsel, please proceed.

* * * * *

THE WITNESS, JACK N. ROGERS, ESQ., AFTER FIRST HAVING BEEN DULY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP HIM GOD, TESTIFIED AS FOLLOWS:

BY MR. ROGERS:

Mr. Chairman, I would like first to give the Committee some background information on the overall approach of the Communist Party on the question of infiltration of the racial movement in the United States.

In 1928, at the Sixth World Congress of the Communist Party, the Party adopted a program of "self determination" for the Southern negro. I have here a reproduction of a book, written in 1928

by a man named John Pepper—actually John Pepper was one of his aliases; his real name was Joseph Pogany. He went under several other aliases at different times, and he wrote, as a Communist, a book outlining and detailing the Communist Party's plan to use the negro movement, toward revolution in the United States of America. I have photographed certain pages out of his book which I want to offer into evidence for reproduction in our report, and I give these now to our staff director. I will read to the Committee some of the material which is in these particular pages.

(MR. ROGERS READS INTO THE RECORD.)

I would like to call the Committee's attention particularly to the date of this document, this is 1928.

(REPRESENTATIVE SCHOENBERGER ENTERED THE HEARING ROOM.)

Most of the aims set forth by the Communist Party in 1928 toward using the negro movement have already been accomplished in the United States; practically all of them have been. I think it is significant to note that it is reported reliably that at a recent meeting in Shreveport, Louisiana, one of the national officers of the NAACP commented that the next main endeavor of the NAACP in the United States would be an attack upon the question of racial intermarriage in this country. I submit the document, Mr. Chairman.

BY SEN. KNOWLES:

Let the document be entered in evidence.

BY SEN. MITCHELL:

Isn't what's in that book comparatively the same as the Socialist Platform of 1932?

BY MR. ROGERS:

Very similar, yes sir, Senator. Now, along about 1928, there was a big monetary fund set up called "The American Fund for Public Service," popularly known as "The Garland Fund." This was a Communist dominated fund. In 1928 the Fund is reported to have given to the NAACP \$100,000. They have given much more over the later years to the NAACP and to certain extremely radical left-wing causes.

The Communist Party has fought for National control of the

WORKER'S LIBRARY No. 9.

AMERICAN NEGRO PROBLEMS



WORKERS LIBRARY PUBLISHERS

33 East 125th Street

New York

Exhibit 1. Cover of Pamphlet by Communist John Pepper (Joseph Pogany),

Written in 1928.

2)

To this brief foreword to the following essay on some of the basic Negro problems in America, we wish to add the principal demands for the oppressed Negro masses as embodied in the Platform of the Workers (Communist) Party of America:

1. Abolition of the whole system of race discrimination. Full racial, political, and social equality for the Negro race.
2. Abolition of all laws which result in segregation of Negroes. Abolition of all Jim Crow laws. The law shall forbid all discrimination against Negroes in selling or renting houses.
3. Abolition of all laws which disfranchise the Negroes.
4. Abolition of laws forbidding intermarriage of persons of different races.
5. Abolition of all laws and public administration measures which prohibit, or in practice prevent, Negro children or youth from attending general public schools or universities.
6. Full and equal admittance of Negroes to all railway station waiting rooms, restaurants, hotels, and theatres.
7. Federal law against lynching and the protection of the Negro masses in their right of self-defense.
8. Abolition of discriminatory practices in courts against Negroes. No discrimination in jury service.
9. Abolition of the convict lease system and of the chain-gang.
10. Abolition of all Jim Crow distinction in the army, navy, and civil service.
11. Immediate removal of all restrictions in all trade unions against the membership of Negro workers.
12. Equal opportunity for employment, wages, hours, and working conditions for Negro and white workers. Equal pay for equal work for Negro and white workers.

J. P.

American Negro Problems

By JOHN PEPPER

The Negro question in America must be treated in its relation to the liberation struggle of the proletariat against American imperialism. *The struggle against white oppression of the Negro masses is a part of the proletarian revolution in America against capitalism.* The American working class cannot free itself from capitalist exploitation without freeing the Negro race from white oppression. What Marx said about the United States is still true: "Labor cannot emancipate itself in the white skin where in the black it is branded."

At the same time the Negro question in the United States of America must be treated in its relations to the huge Negro masses of farmers and workers oppressed and exploited by white imperialism in Africa and South America. The Negroes of the United States are the most advanced section of the Negro population of the world and can play a decisive role in helping and leading the liberation movement of the Negro colonies. Within the Negro population of the United States, the *Negro working class* is destined to be the vanguard of all liberation movements and may become the vanguard of the liberation movement of the Negro peasant masses on an international scale.

A NEGRO PROLETARIAT APPEARS

The industrialization of the agrarian south of the United States, the concentration of a new Negro working-class population in the big cities of the east and north, and the entrance of the Negroes into the basic industries on a mass scale, have been changing, in the last few years, the whole social composition of the Negro race in America. *The appearance of a genuine Negro industrial proletariat creates an organizing force for the Negro race, furnishes a new working-class leadership to all Negro race movements, creates the possibility for the Negro workers under the leadership of the Com-*

Communist Party there can be no place for nationalism. The Communist Party must be the Party of internationalism.

TASKS OF THE COMMUNISTS IN NEGRO WORK

The appearance of a Negro industrial proletariat on a growing national mass scale makes it imperative that the main emphasis of the Party work should be placed on these new proletariat forces. The Negro workers must be organized under the leadership of the Communist Party and drawn into joint struggle, together with the white workers. The Party must understand how to link up all racial, national demands of the Negroes with the economic and political struggles of the workers and poor farmers. Much more emphasis than before must be laid on the trade-union organization of the Negroes. The Party must penetrate all existing Negro trade unions. It is a basic task of the Communist Party to organize the Negroes into trade unions. In all the work of organizing the unorganized carried on under the leadership of the Communist Party, we must insist upon the inclusion of Negro workers with white workers in the newly organized trade unions. In the existing trade unions, the Party must fight for the admittance of Negro workers. Where the labor bureaucracy refuses to admit Negroes, it is the duty of the Communist Party to organize Negro trade unions. At the same time the principle of one union for each industry, embracing white as well as Negro workers, should be the aim of the Communist Party.

The importance of trade-union work imposes special tasks upon the T. U. E. L. The T. U. E. L. has neglected the work among the Negroes, notwithstanding the fact that these workers are objectively in a position to play a very big part in carrying through the programme of organizing the unorganized. Greater contact must be established between the T. U. E. L. and the Negro masses. The T. U. E. L. must become the champion of the rights of the Negroes in the old unions and in the organizing of new unions for both Negroes and whites, as well as separate Negro unions.

It is one of the biggest tasks of the Workers Party to extend its activities to the "Solid South," the beginning of which has been made in the election campaign. The Party was not able to carry on any work among the Negro farmers and agricultural workers of

the "black belt." It is the duty of the Party to study and analyze the conditions of the Negro farming masses, to work out demands to meet their situation, *to organize special Negro farmers' organizations as well as organizations of the agricultural workers.* It is necessary that the Party should establish new district organizations in the south, especially in the most important industrial centres. The Party organizations in these industrial centers of the south should be the bearers of the educational and organizing work of the Party among the Negro farmers and agricultural workers.

The fight against segregation, lynching, and political disfranchisement of the Negroes, must be organized. *It is necessary to help the Negro masses to organize themselves for active resistance and self-defense against the lynching terror of the Ku Klux Klan and similar terroristic gangs of the white bourgeoisie.* The U. L. D. which so far has almost completely neglected work amongst the Negro masses, must hereafter put in the forefront of its propaganda, agitation and activities, energetic campaigns against lynching and juridical oppression of the Negroes.

The communists must participate in all national liberation movements of the Negroes which have a real mass character. The existing national organizations and movements of the Negroes are today under the domination of the Negro petit-bourgeoisie and even their bourgeoisie. *The aim of the Communist Party must be to fight for the hegemony of the working-class elements in the national liberation movement.* The basic task of the communists is to form working-class organizations for the Negro proletariat and agricultural workers, and farmers' organizations for the Negro farmers and to turn these organizations into energetic integral forces of the whole class struggle. The communists must not forget for a moment that *the struggle for the national liberation of the Negroes includes the relentless struggle against the Negro bourgeoisie and the struggle against the influence of the petit-bourgeoisie over the Negro proletariat.* It is permissible to form a united front (for example in the form of a Negro Race Congress) of the working-class elements with the petit-bourgeois elements. The policy of the communists within this united front must be:

- (a) To free the working class from the ideological and organizational influence of the petit-bourgeois elements.
- (b) To begin the struggle for the leadership of the working class.

The communists must bear in mind that the alliance of the Negro working class with the Negro petit-bourgeoisie can be maintained only under the following conditions:

- (a) A revolutionary fight of the petit-bourgeoisie for Negro race demands against American imperialism.
- (b) No obstacles by the petit-bourgeoisie against the special class demands and organizations of the Negro workers and exploited farmers.

The communists must under no circumstances merge their organization with the petit-bourgeois organizations and must reserve for themselves fullest rights of criticism and propaganda.

The American Negro Labor Congress which is still very weak, must be reorganized and activized. The communists working within this organization should try to make it serve as an *intermediary mass organization, as a medium through which the Party can extend its work among the Negro masses and mobilize the Negro workers under its leadership.* After careful preparatory work which must be started at once, another convention of the American Negro Labor Congress should be held. For this convention a carefully worked-out program should be prepared. It should contain not only demands of the Negro workers, but also the agrarian demands of the farmers and agricultural workers.

The Negro miners' relief committee and the Harlem Tenants League are examples of united front organizations which may be set up as a means of drawing the Negro masses into struggle. But these organizations can be considered only as a beginning. The communists working within these organizations should try to broaden them, and similar committees should be organized in other Negro centers. In every case the utmost effort must be made to combine the struggle of the Negro workers with that of white workers and to draw the white workers' organizations into such united-front campaigns.

One of the greatest shortcomings of the work of the American Party among the Negroes is the lack of sufficient Party cadres among the Negro comrades. The next and most important task of the Party in this respect is the selection and education of a cadre of Negro communist workers. The proletarian character of the Negro Party leadership must be brought forward more clearly than before. At the same time the proletarian Negro intellectuals must be utilized

AMERICAN NEGRO PROBLEMS

to the full. It is imperative to utilize all Party schools in the U. S. A. and abroad to train Negro comrades as leaders and for special work among the Negro farming masses.

The activities of the Negro comrades should not be confined exclusively to the work among the Negroes, but they should participate in the general Party work. Simultaneously white comrades must be specially trained for work among the Negroes. *The Negro Champion* must be published regularly. Every effort must be made to develop it into the mass organ of the Negro workers and working farmers. The general Party press must be utilized to its full extent for propaganda among the Negroes. A regular Negro news service must be built. *The utmost effort must be made to attract Negro workers and Negro agricultural laborers as members into the Communist Party.* The present Negro membership of the Communist Party is inadequate to fulfill the great tasks before it. A special recruiting campaign for Negro workers should be initiated in connection with the general economic and political campaigns of the Party. In the present election campaign, wherever possible Negro communist candidates should be nominated in the important Negro centers.

The Negro question in the United States must be treated in its relation to the general international Negro problem. The question of a Negro World Congress should be considered but it can be realized only if a Negro working-class leadership in the Congress can be secured. One aim and purpose of the work among the Negroes in the U. S. A. should be to organize them as the champions of the Negroes all over the world, against imperialism. A strong Negro movement in the U. S. A. will be able to influence and direct the Negro movement in all those backward parts of the world where the Negroes are oppressed by the various imperialist powers.

NAACP ever since. They have never gotten control of it on a National scale, but they have infiltrated the NAACP all of the way, and they have had some success in gaining control of various districts and local groups. There is no anti-Communist movement in the NAACP, nor in any other national negro groups, as far as we have been able to learn. There are many non-Communists in the NAACP, but we are unable to find any significant groups of anti-Communists.

Paul Crouch was the key Communist who set up this program of racial unrest in the United States. Crouch was in Moscow 7 or 8 months in 1928 setting up the basic program of the Communist Party concerning the negroes.

John Pepper, the author of this particular book that I have shown you, took part in this program and the planning in Moscow. He wrote this particular book following his education in Moscow, and his being part of the overall training program. Paul Crouch was the leader of the movement. Wherever Paul Crouch ran the Communist Party in the United States after that as a District Organizer, his wife, Sylvia Crouch, was the District Organizer of the "Young Communist League." She followed him, of course, wherever he went. He would handle the overall organization of the Party, and his wife would control the Young Communist League.

It is reported to us, and we think reliably, that James Dombrowski was chosen by the Communist Party headquarters in New York over Crouch's objections to organize the Highlander Folk School in Tennessee. The first targets of the Highlander Folk School were the textile industry in North Carolina, and the University of North Carolina.

A man named Frank Graham, who was the first president of The Southern Conference for Human Welfare, knew and worked with the Crouches. He was a collaborator with the Party, and even to this day he is alive and working in this general field in the United States.

Alton Lawrence was secretary of the Socialist Party in North Carolina. Crouch, who had Lawrence under his control as a Communist Party member, evidently had Lawrence remain there in North Carolina and become an undercover member of the Communist Party. Lawrence was identified in a Congressional Hearing in 1954 as an undercover member of the District Bureau of the Communist Party in North Carolina.

The Southern Conference for Human Welfare was the key Communist Party apparatus in the South to carry out the Communists' racial program. Some Communist Party members were sent to Birmingham to set the program up properly at the initial founding

of the Southern Conference for Human Welfare in November, 1938. The Communist Party had sent Crouch to Birmingham even before that in 1937.

In November, 1938, the Party sent Bart Logan, Alton Lawrence, and Gilbert Parks, leading North Carolina Communist Party members, to Birmingham to do the job of setting up the Southern Conference for Human Welfare. They, along with Crouch, were the steering apparatus of the Southern Conference for Human Welfare. There were also many rank and file Communist Party members there from North and South Carolina at that time. Bart Logan was succeeded by a man named Sam Hall of Alabama in his Party job. Hall had been the Reserve District Organizer in the underground apparatus in Alabama prior to that.

The main significance of this, gentlemen, is that in 1954, Paul Crouch testified as a voluntary witness before the Senate Internal Subcommittee in New Orleans, and he and another ex-Communist both identified James Dombrowski as a Communist. I am speaking of Dr. James A. Dombrowski, who is currently the Director of the Southern Conference Educational Fund. Obviously, Paul Crouch was in a unique position to know the facts of the situation.

I have a little information on Dr. Dombrowski which we have not put into any of our previous Hearings, which I think will be of interest to the Committee. I have here a list of 6 organizations which have been declared subversive by the Attorney General of the United States, pursuant to Executive Order 10450, with which Dr. James A. Dombrowski has affiliated himself on the public record. Dr. Dombrowski also has a public record of affiliation with a large number of other organizations which have been found to be "Communist Fronts," or subversive, by Congressional Committees.

The 6 particular subversive organizations to which I refer are: The National Federation for Constitutional Liberties; The American Committee for the Protection of the Foreign Born; The Peoples' Institute of Applied Religion; The National Negro Congress; The Southern Negro Youth Congress; and the International Workers' Order. I submit this list, Mr. Chairman, as a document for the Committee's consideration.

BY SEN. KNOWLES:

Let the document be received.

BY MR. ROGERS:

I also hold in my hand 8 typewritten pages, listing Dr. Dom-

James A. Dombrowski

AFFILIATIONS WITH ORGANIZATIONS DESIGNATED BY THE ATTORNEY GENERAL OF THE UNITED STATES PURSUANT TO EXECUTIVE ORDER 10450:

American Committee for Protection of Foreign Born.

The program for the Fifteenth National Conference of the American Committee for Protection of Foreign Born held in Chicago, Illinois, on December 11 and 12, 1948, carried the name of James A. Dombrowski as a sponsor.

National Federation for Constitutional Liberties.

The 1944 report of the Special Committee on Un-American Activities, United States House of Representatives, set out that James Dombrowski was a member of the National Federation for Constitutional Liberties.

People's Institute of Applied Religion. The 1944 report of the Special Committee on Un-American Activities, United States House of Representatives, pointed out that James Dombrowski was listed as a sponsor of the People's Institute of Applied Religion.

National Negro Congress. The report of the Committee on Un-American Activities, United States House of Representatives, dated July 21, 1947, and entitled "Testimony of Walter S. Steele Regarding Communist Activities in the United States" reflects that James Dombrowski of the SCHW was a sponsor of and a speaker at the tenth annual convention of the National Negro Congress held in Detroit from May 30, to June 2, 1946.

Southern Negro Youth Congress. The report listed directly above reflects that James Dombrowski was listed as a member of the Advisory Board of the Southern Negro Youth Congress.

International Workers Order. At the beginning of the judicial hearing in late 1950 in New York State with respect to the liquidation of the International Workers Order (IWO), that organization circulated a petition addressed to Governor Thomas E. Dewey of New York, which petition requested Governor Dewey to withdraw the liquidation proceedings against the IWO. James A. Dombrowski of New Orleans was a signer of this petition.

It was reliably reported that on April 11, 1951, a group of persons was solicited to sign an amicus curiae brief in behalf of the IWO to be presented in connection with the liquidation proceedings against the IWO in New York. James A. Dombrowski of New Orleans was a signer of this brief which, in effect, requested dismissal of the liquidation proceedings.

Exhibit 2. List of six subversive organizations with which Dr. James A. Dombrowski has publicly affiliated himself.

browski's extensive affiliations with other Communist-Front organizations.

The Southern Conference Educational Fund has now been cited 5 separate times as a Communist-Front organization; twice by the House Committee on Un-American Activities of the U. S. Congress under its old name, "Southern Conference For Human Welfare;" once, by the Senate Internal Security Subcommittee of the U. S. Senate under its present name, and twice by this Committee under its present name.

I offer into the record, Mr. Chairman, a photograph of the masthead of the newspaper published by the Southern Conference Educational Fund. This newspaper is called: "The Southern Patriot," and has been cited by the U. S. Congress as a "subversive publication". The masthead it lists the managers and operators of the Southern Conference Educational Fund. This is the masthead for October, 1963, and I would like to give the Committee some information about a few of these particular people who run this organization.

The "President Emeritus" of the SCEF is Aubrey W. Williams. Williams was identified by 2 ex-Communist witnesses in the 1954 Senate Internal Security Subcommittee Hearing in New Orleans as a Communist. The President, currently, is Fred L. Shuttlesworth. Fred L. Shuttlesworth is a Minister, he is a negro, and he has been very active in the racial movement. He is a close associate of Dr. Martin Luther King, and he is also an ex-convict, having been convicted of bootlegging.

The Vice-Presidents include John M. Coe. John Coe is a former president of the National Lawyers' Guild, one of the most well-identified Communist Front Organizations in the United States, cited as "the foremost legal bulwark of the Communist Party."

The Treasurer of the organization is Benjamin E. Smith. Smith is an attorney in New Orleans. He is an active officer of the National Lawyers' Guild. He and his partner, Bruce C. Waltzer, are both registered agents of Communist Cuba, registered with the Attorney General of the United States under the Foreign Agents' Registration Act.

I hold in my hand, Mr. Chairman, a photographic copy of the entire Registration Statement filed with the Attorney General of the United States, signed with the signatures of Benjamin E. Smith, and Bruce C. Waltzer, in which they register formally as agents of Communist Cuba. I offer them into the record, Mr. Chairman.

BY SEN. KNOWLES:

Let them be received into the record.

THE SOUTHERN PATRIOT

The Southern Patriot

The Southern Patriot is published monthly except July and August by the Southern Conference Educational Fund, Inc., dedicated to ending segregation and discrimination based on race, creed, color, or national origin. Editorial offices, 4403 Virginia Ave., Louisville 11, Ky.; business offices, Suite 404, 822 Perdido St., New Orleans 12, La.; office of publication, 150 Tenth Ave. North, Nashville, Tenn. Twenty-five cents a copy, \$2 a year. Entered as second-class mail matter, Nashville, Tennessee.

THE SOUTHERN CONFERENCE EDUCATIONAL FUND, INC.
822 Perdido Street, New Orleans, Louisiana, 70112

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CARL BRADEN
JOHN R. SALTER JR.

Eastern Representative
WM. HOWARD MELISH

Vol. 21 No. 8



Oct., 1963

Exhibit 3. Masthead of "The Southern Patriot" for October, 1963.

BY MR. ROGERS:

The "special consultant" of the SCEF is a colored woman named Ella J. Baker, who left a job as Executive Secretary to Martin Luther King to come to work for the Southern Conference Educational Fund. The "Executive Director" of the Southern Conference Educational Fund is James A. Dombrowski, of whom I have already spoken.

The editor of this newspaper published by the Southern Conference Educational Fund is Anne Braden, and the Field Organizer for the organization is Carl Braden. These people are man and wife, they are newspaper people from Kentucky, and they were both identified in 1954, in Court, as Communist Party members, by the testimony of a woman named Alberta Ahearn. She testified in Carl Braden's trial for "Sedition" in Louisville, Kentucky, that she knew both of the Bradens as Communist Party members, that she had attended Communist Party meetings in their home, and that she had actually been recruited into the Communist Party by the Bradens. They were subsequently further identified in a Congressional Hearing 2 or 3 years later as Communist Party members. Braden was convicted in Kentucky of "Sedition" and later was convicted in a U. S. Court, of "Contempt of Congress."

The "eastern representative" of this organization is a man named William Howard Melish, who also professes to be a Minister. Melish was identified by Louis Budenz, and others, in testimony before the Subversive Activities Control Board of the United States, as a Communist. I submit to the Committee that this type of leadership speaks for itself, and I offer the document to which I have referred.

BY SEN. KNOWLES:

Let the document be received.

BY MR. ROGERS:

At this time I would also like to offer a document which we have prepared by combining the front of the letterhead of the Southern Conference Educational Fund, and the back of the letterhead, which shows all of the officers, including the Board of Directors and the Advisory Committees. This shows, besides the active officers who do the work, all of the Board Members who are supposedly advising this organization on policy. I offer this into the record. Mr. Chairman.

BY SEN. KNOWLES:

Southern Conference Educational Fund, Inc.

PUBLISHERS OF The Southern PATRIOT

822 PERDIDO STREET, NEW ORLEANS 12, LOUISIANA • Area 504 225-7333

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Exhibit 4. Officers, Board of Directors and "Advisory Committees" of the Southern Conference Educational Fund.

Cincinnati Pastor Named As Head Of 'Red Front'

To help its readers keep on guard against propaganda, the Cincinnati Enquirer brings you this authoritative weekly report.

BY JACK LOTTO

One of the top leaders of the integration movement in the South has been named head of a big pro-Communist front.

Won't Answer Charges, Accused Minister Says

Rev. Mr. Shuttlesworth, contacted in Birmingham, Ala., where he has been a leader in demonstrations there, gave the following statement:

"I do not intend to become involved in verbal gymnastics with those, who for years, have prided themselves and made themselves famous for slandering the character of others without proof and for making a mockery of the democratic process which says a man is innocent until proven guilty.

"I have the highest regard for this organization (SCEF), for the work it has done since I have been a member of the board, and I have seen nothing on the part of any person, with whom I have been associated, to give any substantiation to these charges.

"Generally, the House committees are governed by Communists who will label any organization subversive or communist that seeks to further the American aims of integration, justice and fair-play.

"To a segregationist, integration means Communism. I can think of nothing more un-American than the House Committee of Un-American Activities."

Carl Braden, a former Cincinnati newspaperman, touched off a heated UC faculty controversy with his March 7 appearance at the university.

He is the Rev. Fred L. Shuttlesworth, 686 Dana Ave., pastor of the Revelation Baptist Church, 1944 John St.

The past he was elected to is President of the "Southern Conference Educational Fund," with headquarters in New Orleans, and active in 17 southern states.

Both the Senate Internal Security Subcommittee and the House Committee on Un-American Activities have described the SCEF as an organization set up to "promote Communism" throughout the South.

This group has a long history of activity in the South. It originally was known as the "Southern Conference for Human Welfare." One of its founders was a veteran Communist, the late Louis E. Burnham.

When the SCHW was cited as a Communist front in 1947 by the House committee, it ostensibly went out of business.

It quickly reopened at the same New Orleans address, under the new name and with the same telephone number.

According to the Senate subcommittee, the Southern Conference Educational Fund was "operating with substantially the same leadership and purposes" of its predecessor.

Said the House report on the SCHW:

"It seeks to attract southern liberals on the basis of its seeming interest in the problems of the South. Its professed interest in southern welfare is simply an expedient for larger aims serving the Soviet Union and its subversive Communist party in the U. S."

The field secretary for the SCEF, and editor of its publication, "The Southern Patriot," is Carl Braden, of Louisville, Ky. Braden, identified in sworn testimony as a member of the Communist party, recently finished serving a one-year prison term for contempt of Congress.

New additions to the Board of the Southern Conference Educational Fund included the Rev. James A. Selner, Methodist minister in Panama, City, Fla. Rev. Selner, the father of Bob Selner, the "freedom-walker" active in the "student non-violence committee," and now serving a jail term in Alabama.

ANOTHER BOARD member is Mrs. Diane Bevel, of Cleveland, Miss., active in Nashville student demonstrations, and currently working in Alabama and Mississippi.

She is jailed in Gadsden, Ala., for taking part with Selner in a pro-integration march, following in the steps of William Moore, the postman shot and killed during a one-man protest march.

Communists and pro-Communists are moving into the South to provoke friction between whites and Negroes. On the scene is James E. Jackson, a member of the four-man ruling secretariat of the U. S. Communist party.

Jackson, who is propaganda boss in the U. S. for the Reds, is also the party's secretary for southern and Negro affairs—a police term for chief racial trouble-maker.

This Moscow-trained Negro has been in the forefront of Communist organizational and agitational work in the South for years.

In 1959, he went to Russia as the representative of the U. S. Communist party at the 21st World Congress of Communist parties. There, he hailed the Soviet Union and denounced the United States.

He is the Rev. Fred L. Shuttlesworth, of Birmingham, Ala.

Let it be received.

BY MR. ROGERS:

I would like to further offer into the record at this time, a clipping from the Cincinnati Inquirer, dated June 9, 1963, showing a column by Mr. Jack Lotto discussing the SCEF and commenting upon the refusal of Rev. Fred L. Shuttlesworth to discuss the Communist Connections of the Southern Conference Educational Fund.

BY SEN. KNOWLES:

Let it be received.

BY MR. ROGERS:

James Dombrowski, as I mentioned to the Committee, was one of the original group that set up the Highlander Folk School. The details of this are published at length in our report #4. Highlander was well identified as a Communist Training School, and was eventually put out of business by the authorities in Tennessee. The former director of the school, Myles Horton, now runs a similar operation called "The Highlander Center," which continues to carry out the same function the Highlander Folk School once did.

I have here, and I offer to the Committee, a memorandum from the files of the SCEF, written by either Anne or Carl Braden, which shows in detail the relationship between the Southern Conference Educational Fund, the Student Non-Violent Coordinating Committee, and the Highlander Folk School. The date of this 10-page memo is May 25, 1963, and since it is too long to reproduce I will read some excerpts from it:

"Many of the actions SCEF has stimulated are not generally known to the distant public as SCEF projects. Because they all believe in action, SNCC, SCEF, and Highlander have become natural allies and supporters of each other in the movement in the South. Highlander and SCEF, as the older of the organizations, are able to provide contacts and "know-how" that are invaluable to a movement of this kind. This is just one of the ways in which they have been useful to the SNCC, as well as to other organizations throughout the South and some of the North. Highlander has provided a place where both young and old could meet together, and learn the techniques and skills needed to bring about group action and social change. These people are contacted by SCEF if they had not already been in touch with the organization.

Because we know the stimulation that Highlander provides, we encourage our contacts who are not already in touch with Highlander to go there. Leaders of the movement in Jackson, Mississippi, say that SCEF has done far more than any other Civil Rights Organization to call their situation to the attention of people everywhere and get them support. National NAACP leaders have now gone to Jackson and stated that they will support an all-out effort to break down segregation. More action is in the making and SNCC will have a part in it, so will SCEF. One of the ways in which SCEF is able to make contacts for SNCC is through the large number of educators who work with SCEF or support it in one way or another. A college professor may have a SCEF staff-member address his class on integration and civil liberties, usually both. The students then want to know what they can do. They are urged to form a group affiliated with SNCC, and go into action. SCEF operates on the principle of "tangency." This means that it is structural tangent to all of the groups working for the same objectives. It also means that tangency cannot operate when it is determined that the relating structure has an axe to grind, or attempts to assume the function of the allied groups. Tangency can be a powerful weapon for action. The position may be used as a catalyst to aid in the definition of problems and to stimulate action, but the intermediate and neutral role must be clearly defined. Recent events in the South are causing more white people to engage in the struggle, especially young people."

From these little excerpts, you can see the overall pattern of activity here. The Southern Conference Educational Fund, working through Highlander Folk School and the Student Non-Violent Coordinating Committee, is actively recruiting students, young people, and even more mature adult personalities, to attend Highlander Folk School, and now days, Highlander Center, where they are trained in the Communist Party technique of racial unrest and revolution.

The memo goes on at some length describing specific areas of cooperation and mutual support between the Southern Conference Educational Fund, the Student Non-Violent Coordinating Committee, and the Highlander Folk School. The overall pattern seems to be that the SCEF guides these students, recruited through the SNCC, into Highlander. This is, of course, dressed up in the guise of integration and civil rights for a cover story. I offer the memo, Mr. Chairman.

BY SEN. KNOWLES:

Let it be received.

BY MR. ROGERS:

I would also like to offer for the record a letter from Anne Braden to Bob Zellner of the SNCC which shows the close control of the Communists over the SNCC. This is a 2-page letter from the SCEF files.

BY SEN. KNOWLES:

Let it be received.

BY MR. ROGERS:

Mr. Chairman, I would like now to place in the record a recent publication of the Southern Conference Educational Fund, discussing its activities in 1964. The same old cover story of integration and civil rights is used in this, but some points in it are worth noting. On page 4, this pamphlet describes two separate pamphlets written by Anne Braden, previously well identified as a Communist Party member, and for several years one of the operators of the SCEF. The first of these pamphlets entitled: "HUAC, Bulwark of Segregation", is a good sample of Communist propaganda hidden behind the cover of civil rights. It urges that Communists be accepted into the Civil Rights Movement, and that all of the legislative investigative committees of the Congress and of the States be abolished. The SCEF and another Communist Front called, "The National Committee To Abolish The HUAC" are distributing these two pamphlets as is noted on page 4 of this particular offering. The Communist Party propaganda line in the United States today is that any anti-Communist effort is actually an anti-Civil Rights, Segregation effort. This point of view is set forth on pages 5 and 6 of the document in my hand. It is interesting to note that the list of current officers of the Southern Conference Educational Fund on page 6 does not mention Anne or Carl Braden, although they were mentioned elsewhere in the pamphlet. It may be that the Southern Conference Educational Fund is de-emphasizing the connection with the Bradens because of their very obvious and well-documented identification in 1954 as Communist Party members. I offer these 4 pages which are photographs of the pamphlet pages.

BY SEN. KNOWLES:

Jim: Copy of letter to Zellner which is
self-explanatory. What is your feeling
about the matter covered? I've never
heard you express yourself. A.

004381

Tuesday, October 2, 1962

Dear Bob: (Zellner)

I'm probably very late bringing this matter up---
but I never seem to manage to think ahead very far,
since sufficient to the day always seems the evil
thereof---or something.

But I find myself wondering whether you or Carl
either one have adequately thought through your plans
for this coming weekend. Maybe you have, and if so
I apologize, but in talking with Carl this weekend I
didn't feel he had.

I am referring to the your all's plan to deliberately
get arrested in Talladega---or to deliberately court
arrest.

I hope you will understand that my doubts and
qualms about it are not personal. I'm glad for Carl
to go to jail if it is necessary and if it will do
some good---and actually I don't manage to see much
more of him when he's out of jail than when he's in,
so that is not a factor.

But my question on this is whether it is necessary
and whether it will do some good. I'm not saying it
won't. I'm just wondering if you all have really
considered all the angles. I also wonder whether
your respective "bosses", Jim Forman and Jim Dombrowski,
have been sufficiently consulted, and I'm sending them
a copy of this letter.

I do think we can't allow injunctions to stop our
work anywhere. I'm all for ignoring them. I would
certainly say go on and work in Alabama, do what you'd
do anyway ---and if authorities consider that violation
of an injunction, so you get arrested. No question but
what this is the right thing to do. As a matter of fact,
you were both in Alabama last week doing just that---
and I imagine you are there this week.

And it may be also that you should deliberately
take an action before the court hearing which defies
the injunction. It seems to me this is worthwhile if
(1) it would help spark new action in Talladega itself
among the people there or (2) it would create a test
case by which the injunction issue could get through the

Exhibit 6. Copy of letter from Communist Party member Anne Braden to Bob
Zellner of the Student Non Violent Coordinating Committee.

courts more quickly than otherwise, or an effective public campaign could be waged---so that we would strike a blow at the whole concept of injunctions to stop integrationists.

I am extremely doubtful about Purpose No. 1 above being accomplished by what you and Carl have discussed. Carl does ~~not~~ not have enough influence with people in Talladega themselves. With you, it might be different---but this would depend on a number of factors that I can't know from this distance; you may be able to judge if you were there this week. (In making the distinction between you and Carl on this, I'm not implying that you should act and he not---if you do, I think he should too.)

On Purpose No. 2---I think there is a greater likelihood that this would result---maybe a blow could be struck against injunctions. This would seem to me the best ~~argument~~ argument for going ahead.

But it's pretty problematical---and it seems to me you have to balance it against the value of what both of you might be doing if you are ~~not~~ in jail in Talladega. If you get arrested, I think you are going to be there several months, maybe all winter---and God knows how long. This makes quite a hole in both the SCLC and SNCC staffs---and that is why I think the two Jims should be seriously consulted. I've never heard either one of them express themselves on the subject---although maybe they have.

I'm really quite confused about it. I'm not saying don't do it---and I'm not saying do it. I'm just asking you all to consider all the angles. I know it's easy to rationalize yourself out of ever going to jail by convincing yourself you are needed on the outside. I also know that there is the danger the other way that also threatens the movement---the general feeling that we all just ought to be in jail every so often so people sometimes go whether this is the time and place or not. Someway people have got to steer a course between these two things.

I will say this: I don't want to see this Talladega injunction go unchallenged. If you don't take a deliberate action to defy it, I think you both should simply defy it in the normal course of your work by making it a point to work in Alabama a lot in the immediate future. And of course if you are going to do that, maybe you are better off to force the issue before the hearing. I guess that's partly a legal question.

I'm not sure where you are---so you may not get this letter before next weekend anyway. I'm sending it to Atlanta and copies to the two Jims. Maybe ~~figure~~ if you are in Talladega this week, you'll get arrested anyway before the weekend, and that will settle the matter. In that event, I certainly think Carl ought to come on down and make a similar stand.

Much love,

Anne Braden

Let them be received.

BY SEN. MITCHELL:

Has any of the so-called "liberal" community in the United States recognized the Southern Conference Educational Fund for what it really is?

BY MR. ROGERS:

Yes, Senator, they have. Several rather liberal sources have identified the Southern Conference Educational Fund accurately. I offer for the record first in this regard, a letter from the SCEF files from Carl Braden, previously well identified as a Communist, to James Dombrowski. The really important part of this letter is in the next to the last paragraph where Braden quotes Roy Wilkins, Executive Secretary of the NAACP, as commenting that the Bradens and the SCEF are part of the grand design of the Communist Party. I will read this particular paragraph to the Committee:

"If we get our facts wrong, then we must admit it and then correct them. Getting facts wrong is not half so damaging as having Roy Wilkins tell our supporters in New York that Anne's and my employment by SCEF was part of a grand design by the Communist Party to revive SCEF as a vehicle in the South, and that the Party did this as part of its effort to stir up trouble in the South. Such rot spread around New York and other places is what really makes people like J. Oscar Lee suspicious of us."

I offer the document into the record, it has 2 pages.

BY SEN. KNOWLES:

Let it be received.

BY MR. ROGERS:

I next offer 2 letters out of the SCEF files from and to a man named Al Maund, who has publicly demonstrated his sympathy and support for various Communists and Communist causes on several occasions. These letters both comment on the fact that the AFL-CIO has placed the SCEF on its private list of subversive organizations. It is interesting to note in the last sentence of the first letter, that a reference is made to "a campaign against Meany, et al.," by Dombrowski and Aubrey Williams. Both Dombrowski and

**the
Southern
Conference
Educational
Fund, inc.**

**ITS PLANNED ACTIVITIES
AND
FINANCIAL REQUIREMENTS
1964**

Exhibit 8. Cover of SCEF Pamphlet concerning 1964 activities.

THE SOUTHERN CONFERENCE EDUCATIONAL FUND, INC.

THE BUDGET: SCEF's annual budget is about \$110,000, about 25% of this goes for administrative and general office expense; and about 75% for publications and special projects. The administrative and general office expense is a fairly stable, fixed sum, but the publications and special projects budget is adjustable. Only those projects are undertaken for which money has been raised or which appears to be in sight.

WHERE THE MONEY COMES FROM: All of SCEF's budget comes from voluntary, individual contributions. We have about 300 friends who contribute \$100 or more, but most of the annual gifts are from "little people", from \$10 to \$25. A special effort is being made to secure \$12 a-year-gifts (\$1.00 per month).

HOW THE MONEY IS SPENT: SCEF is in regular contact with about 100 grass roots civil rights organizations in the South, lending them encouragement, and making available a staff of professionally trained, experienced technicians, especially skilled in public relations and community organizations.

SCEF'S STAFF: SCEF's field staff includes Carl and Anne Bruden, who have worked as reporters and editors on some of the South's largest newspapers; John R. Baker, Jr., formerly professor of social studies at Tougaloo College, Mississippi, and advisor to the Jackson, Mississippi, NAACP Youth Committee which did such a remarkably fine job of organizing the Jackson Freedom Movement; the Rev. William Howard Melish, an ordained Episcopal Minister, and chairman of the Religious Freedom Committee; Mrs. Ella J. Baker, formerly national Director of Branches for the NAACP, and former executive director of Dr. Martin Luther King's organization, the Southern Christian Leadership Conference; Adult Advisor of the Student Non-Violent Coordinating Committee; Coordinator Washington office, Mississippi Freedom Democratic Party.

EDUCATION FOR GRASS ROOTS LEADERS: SCEF conducts workshops on a local and regional basis for the leadership of grass-roots civil rights groups for the discussion of basic issues, policies, and directions. In the past 3 years special attention has been given to the relationship of civil rights and civil liberties.

WHO DIRECTS SCEF'S POLICIES: SCEF's board of directors of 30 and its advisory committee of 100, divided about equally between whites and Negroes, all live in the South. The Rev. Fred L. Shuttlesworth, noted civil rights leader of Birmingham and Cincinnati, is president of SCEF.

SCEF'S UNIQUE CONTRIBUTION—ENLISTING WHITE ALLIES: While all SCEF projects and activities are integrated, SCEF regards its unique contribution to the civil rights struggle to be the seeking out, and encouragement of Southern white liberals. For 25 years SCEF has provided a rallying point for those Southerners who wanted to take an uncompromising stand against all forms of discrimination and segregation. As our field staff travels about the South, they try to find these isolated liberals and help them to feel they are not alone.

BUILDING LINES OF COMMUNICATION—THE SOUTHERN PATRIOT: SCEF helps to maintain lines of communication between all integrationists in the South by means of a monthly newspaper the Southern Patriot, now in its 22nd year of continuous publication. It collects, and interprets the news of the Southern integration struggle, publishes profiles of its leaders, etc. Almost all of this material is written by the Patriot's own staff of correspondents, and is not available from any other source. The Patriot is not a SCEF house organ—it publishes news of all integrationist organizations active in the South. It can be found in the libraries of many of the country's leading colleges and universities. The Patriot is sent automatically to all contributors to the Fund.

NEWS BUREAU: SCEF maintains a news bureau servicing about 300 newspapers, magazines, TV and radio stations.

WHITE STUDENT PROJECT WITH "ENICK": For the past 3 years SCEF has given a grant to the Student Non-Violent Coordinating Committee (SNCC—"ENICK") to pay the salary and expenses of a fulltime field secretary to visit "white" college campuses in the South with the aim of involving more white students in the freedom movement. For the first two years "ENICK" selected Bob Zellner to work under this grant.

This school year it is Sam Shirah. For the first 2 years this grant was \$5,000. This year, because of the financial crisis precipitated by the strike, the grant has been reduced to \$2,000 or \$200 per month. We would like to restore this grant to its original amount.

TWO NEW PUBLICATIONS: SCEF is distributing a new publication by Anne Braden, published by the National Committee to abolish HUAC, under the title of "HUAC-BULWARK OF SEGREGATION", and plans to distribute another pamphlet by the same author. It is a basic document, still to be named, on the SCEF ~~case~~ case. We need \$7,500 for this publishing project: \$2,000 for the HUAC pamphlet, and \$5,500 for the pamphlet on the SCEF case.

SCEF is interested in two projects that are close to the hearts of two of its associates:

(1) **HALIFAX COUNTY, N. C.**—John R. Salter, Jr. has laid out an ambitious plan for the development of a group-estate community campaign for the Tidewater region, beginning with a Voter-Education project in the largest county in North Carolina (Halifax County—69% Negro). They need food, clothing, books of all kinds, and money. \$4,000 would finance the project in its initial stages. (Telephone, postage, mimeo supplies, gas, etc.) This project could be just as significant for the Tidewater region as Fayette County has been for Tennessee and the Delta.

(2) **APPALACHIA:** Sam Shirah, a SNCC staff member, working under a SCEF grant, has had a dream concerned with the problem of how to convert the Southern Negro student protest movement into a real black and white movement of people against injustice. To put it more positively and concretely, how to unite the dispossessed in a program for "Jobs and Freedom". He wants to start in the Southern Mountain region. We would like to be able to help finance an office and election staff for one year. \$5,000 would do it.

SCHOLARSHIP AID FOR YOUNG FREEDOM FIGHTERS: SCEF has raised more than \$5,000 to provide scholarship aid for the children of the Rev. Fred L. Shuttlesworth, 3 of whom are now students at the University of Cincinnati. A few other young people

have been helped. This is one of the areas where more funds are needed urgently.

COOPERATION WITH OPERATION FREEDOM & AID FOR VICTIMS OF ECONOMIC REPRESSION: SCEF helped to set up Operation Freedom which is doing such a marvelous job with loans and grants to the Freedom Fighters in Fayette and Maywood Counties and in the Mississippi Delta, to help the victims of economic repression to make a crop and stay alive. Where Operation Freedom has been unable to help, SCEF has stepped in to assist some special cases:

(1) SCEF raised \$10,000 in loans to refinance the business of a Negro business man in Mississippi, in order to give him an economic base from which to carry on his activities as a leader in the freedom movement.

(2) SCEF has raised \$21,000 in loans to finance another key Negro business man in Tennessee. The money was used to complete and equip a multipurpose building when white merchants refused to sell to Negroes, when they began to register to vote. The Small Business Administration has agreed to take over the mortgage upon completion.

(3) SCEF has raised \$45,000 in bail bonds for young freedom fighters, almost all of them SNCC Solid workers and members.

SCEF'S LEGAL DEFENSE, OUR MOST URGENT IMMEDIATE NEED: We have listed some of the typical projects of SCEF which will indicate how our funds are spent, and I have mentioned a few projects for which we need funds now in order to maintain our regular program. However, the raids and arrests on October 4, 1963, placed a heavy financial burden upon the Fund for legal defense.

In addition to the criminal prosecutions of 2 SCEF officials by the State of Louisiana, SCEF has two cases on appeal to the U. S. Supreme Court, one for a half million dollars in damages, and one, which is the key case, testing the constitutionality of the Louisiana Statute. SCEF desperately needs immediate financial aid for legal defense. We are trying to raise \$25,000 for legal defense in 1964, in addition to the regular budget of \$110,000 or a total of \$135,000.

THE SIGNIFICANCE OF THE SCEF COURT CASES: Much more is involved in SCEF's legal defense than the survival of the Fund, for if Louisiana is successful in its efforts to destroy SCEF, it is certain that Mississippi, Alabama, Georgia and other Southern

states will move quickly against all civil rights organizations and their leaders.

The significance of the SCEF case was stated by Circuit Judge John Minor Wisdom at the beginning of his forthright dissent:

"The main issue in this case (*Dombrowski v. Pfister*) is whether the State is abusing its legislative power and criminal processes: whether the State, under the pretext of protecting itself against subversion, has harassed and humiliated the plaintiffs and is about to prosecute them solely because their activities in promoting civil rights for Negroes conflict with the State's steel-hard policy of segregation. They ask the federal court to defend their federally protected rights."

It is not stretching the truth to say that the police state tactics used against SCEF, if permitted to stand, are a threat to all organizations working for peace and for social justice, as well as all agencies that challenge the *status quo*.

* * * *

The Washington Post

... A three-judge Federal court now has under consideration a suit by the SCEF attacking the constitutionality of the Louisiana Subversive Activities and Communist Control Law. In the manner of its enforcement in Louisiana, the law seems to be a plain infringement on the advocacy of ideas—and as such in violation of the First Amendment. It seems obvious that it is being used against the SCEF for the sole reason that that organization is engaged in advocating civil rights for Negroes in the South. If it succeeds in this case, it will be used in other Southern states to tag the civil rights movement as "subversive" and Communist. This amounts to rule by intimidation. It is the antithesis of the democratic process.

SUNDAY, JANUARY 12, 1964

SOUTHERN CONFERENCE EDUCATIONAL FUND
822 Perdido Street, New Orleans, Louisiana 70112

President

REV. FRED L. SHUTTLESWORTH

Treasurer

BENJAMIN E. SMITH

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Secretary

JESSIE P. GUZMAN

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JOHN M. COE

Assistant Secretary

CLARICE CAMPBELL

BISHOP CHARLES F. GOLDEN
MODJESKA M. SIMKINS

6

Exhibit 11. Last page of Exhibit No. 8.

Williams, of course, have previously been well identified as Communists, and George Meany, President of the AFL-CIO, is known to be one of the more militant anti-Communists in the whole labor movement. We offer these 2 letters into the record, Mr. Chairman.

BY SEN. KNOWLES:

Let them be received.

BY MR. ROGERS:

A third liberal source which has fairly well evaluated the SCEF is Mr. Ralph McGill, editor of the "Atlanta Constitution." I offer a letter and a telegram from him, both characterizing James Dombrowski as a Communist Fellow Traveler, and the Southern Conference for Human Welfare, the original name of the SCEF, as a Communist Front. It is interesting to note that the letter is addressed to Aubrey Williams, who McGill evidently considers to be his friend, but the original of the letter was evidently sent by Williams to Dombrowski, in whose files we found it.

BY SEN. KNOWLES:

Let it be received.

BY SEN. MOORE:

Mr. Rogers, I have a question about Mr. Ralph McGill, the Editor of the Atlanta Constitution, who has written this letter and also sent this telegram to Mr. Aubrey Williams, in which he is disclaiming any future association with Dombrowski, and others, since they are known to be Communists. The question which comes to my mind is how he couldn't know that Aubrey Williams had been identified as a Communist in this Country. He has, hasn't he?

BY MR. ROGERS:

Yes, Aubrey Williams has; however, this particular letter is dated December 10, 1953, and this was before Williams' public identification at the New Orleans Hearing. It may have been that McGill did not know the full extent of Aubrey Williams' connections at that time. This is probably the answer to it.

BY SEN. MOORE:

As far as Mr. McGill's background is concerned, I think he is known to be an openly liberal newspaper man, isn't that correct?

Southern Conference Educational Fund, Inc.

FIELD SECRETARIES OFFICE

4403 VIRGINIA AVENUE, LOUISVILLE 11, KENTUCKY

SPRING 4-3331

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James A. Dombrowski

Field Secretaries
Anna Braden
Carl Braden

Dec. 5, 1968

001116

Dear Jim:

Your letter of Dec. 1 regarding the Cleveland, Miss., situation and the enclosure from Albert Barnett are indeed disturbing. I am therefore sending copies of this letter to Dr. Barnett and to Amie, who is in Chicago, with the idea that we can call a halt at least temporarily to what we are doing with regard to Amie Moore and Cleveland.

Amie planned to see David and Myrlindson about putting up the money to refinance Amie's service station. I am advising her that perhaps the best thing to do is to count them out and then to employ a professional service to investigate the financial situation in regard to the enterprise. It is possible that both E. D. Nixon and I were sold a bill of goods, although I naturally like to think so.

There is also the possibility that the same thing has happened in regard to the church. I should have followed an impulse that I had after Dr. Barnett said at the Oct. 4 board meeting that he had got back a letter he sent to the pastor of New Hope Baptist Church. It occurred to me that perhaps there was something afoot, but then I dismissed it from my mind because Amie had told me that the minister had another church in the country and I figured he was getting his mail there.

The investigation of the church burning should not have been tied in with the gathering of material on other atrocities that have taken place in the Delta area. In order to interview the people involved in these other affairs, I had to stay pretty well under cover during my stay in Cleveland; in fact I did not leave Amie's home for three days, although we did go out at night a couple of times.

I saw the church from a distance at night and in a fairly poor light. However, it looked to me as though it was a shell of a building and there were marks of fire on the outside of the walls. Perhaps I was a victim of power of suggestion. I had interviewed the pastor in Amie's home that afternoon and heard his and Amie's hair-raising story about the threats and the terror in connection with the burning. I must say that I concluded the church was in mine from looking at it at night in a dim light and from a distance, and from accepting their description of it.

Perhaps a grave error was made in not making an independent investigation of the church, examining it in broad daylight and getting opinions of somebody who knows something about buildings. I took their word for it that the structure had to be rebuilt.

P.S. Our check arrived today. They must have been flown around the globe, as it took three days. C

001126

Another thing occurs to me, now that I am stimulated by Albert's letter. Ammie told me that Clester Current of NAACP was very interested in rebuilding the church at one time. Ammie said he saw Clester in Washington last spring and the latter promised to make an investigation and see what could be done. The people in Cleveland heard no more from NAACP, they said.

Perhaps they did investigate and decide that they didn't feel the church worth rebuilding. Then they just did not say any more, which is the way things are done in this field under the conditions prevailing--people just do not turn you down or attack you but merely have nothing more to do with you. This may be what happened between NAACP and Ammie in regard to the church. One other thing that comes to mind out of this is a remark by Ammie that "The NAACP seems to have written off Mississippi."

Probably what we should do is something similar, if it appears that something is amiss. Then, if it becomes necessary, I will send a letter personally to anybody who asks, stating that it was I who made the error and trying to explain how it happened without casting reflections on anybody.

Perhaps if we just let the matter drop, as the NAACP apparently did, that will be the end of that. However, I am willing to do what I can to repair any damage that might have resulted from acceptance of statements that may not have been facts. This sort of thing is inherent in the way we have to operate in these times, but I suppose it is not really an excuse.

As for Lee of the Council of Churches not trusting us, this has been obvious to me for quite some time. I needed no further verification after talking with him for an hour last month. He, like many other churchmen and people of good will, have been taken in by the Red-baiting of SCLC and members of its staff and board. However, I think this is wearing off. The indictment in Atlanta is an effort by the opposition to revive it.

I agree that it is vital to get our facts straight. I have always adhered to this rule, and never in 24 years as a journalist was I accused of warping or distorting the facts. However, I must say that I was gathering facts and publishing them under ideal conditions, and conditions in Mississippi are hardly ideal, to say the least.

If we get our facts wrong, then we must admit it and correct them. Getting facts wrong is not half so damaging as having Roy Wilkins tell our supporters in New York that Anne's and my employment by SCLC was part of a grand design by the Communist Party to revive SCLC as a vehicle in the South; and that the Party did this as part of its effort to stir up trouble in the South. Such rot spread around New York and other places is what really makes people like J. Oscar Lee suspicious of us.

I am sending this special to your home and am sending a copy special to Anne in Chicago so she can be guided accordingly in approaching Simmons. I shall be very interested in Ammie Moore's reply to yours of Dec. 8 in which you quote from the letter from the Cleveland resident.

With warmest regards,

Carl

Carl Braden

MAUND ✓

ROAD

119 Manor
Akron 13, Ohio
July 31, 1957

G
11791

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Dear Jim and Aubrey,

I am writing you a joint letter because you have been both involved in my problem with the union...and because the most recent development should shock you both.

Yesterday I pounded away at the educational director, whom I suspected of feeding the President a lot of rat poison about the SCUF. He stuck to the point that it didn't matter that he what the SCUF was; the important thing was that the AFL-CIO had branded it "unhealthy for labor." And he said he knew "Dombrowski was a fellow traveler." He refused to produce any documents on the subject.

Subsequently I talked to the President and he, too, refused to accept any bona fides about the SCUF and said about the same as the e.d.

I then contacted a local labor leader whom we had met through a mutual friend. He is a very nice, solid guy. He called Washington for me and then, with amazement, reported this:

His sources are "reliable" but they made him swear on a stack of bibles he wouldn't name them to me. Also they said they would deny what they told him if any outsider asked. But there is an AFL-CIO "subversive list" of organizations. And the SCUF is on it. They would not tell what authorities they used in compiling same, but they said the reason for the SCUF's listing "centered around Dombrowski, who they strongly suspected was a fellow traveler."

The education director had so infuriated me with his geoffiness on the subject that yesterday I was ready to tell them all to go to hell. With the knowledge that the whole labor hierarchy is infected with that type of thinking, I now feel only a dazed disgust.

I told the President I had checked out matters and found it wasn't solely his hysteria. And I understood his position (he is in a minority on very strong and politically hungry executive board) but that I still couldn't accept his terms. Instead, I offered to agree to be discreet in my relationships with the SCUF. He said he wanted the old terms. We wrangled back and forth and then he said he didn't want to hear any more about it. I presume he figures my staying on will be a token of submission, but I interpret it as a stalemate.

At any rate, I don't know how to fight the mist. The people here aren't the real villains...they are just underlings. He will stay on as "God's spies" to see what the hell the system will do next, until


Exhibit 14. Letter from Al Maund to James A. Dombrowski and Aubrey Williams
in re the AFL-CIO "Subversive List".

we are chopped down.

TO JIM: Send the clips for September's PATRIOT. The logic in favor of the Brekens doing it in the future is overwhelming--as I wrote you a while back. ~~Simultaneously~~ I can't help feeling a twinge of sadness though, at the impending separation. For damn near a decade, the PATRIOT has been the one free haven for my ~~water-~~ ink typewriter.

TO AUNNEY: Please brief Paul Woolley on the situation. He is the kind of rank-and-file trade unionist who will eventually be demolished the constipated facade of fear and smear. Also, it should make him value that much more the virtues of Woodruff Randolph of the ITU. Unhappily, I understand that Randolph does not plan to run for re-electi-

Also, between debates, I have interested the President mightily in giving the Southern Farmer the printing contract. I hope you have sent along the bid for 12 pages. Once it arrives, a full discussion of the matter will be held. You can be sure that I will be a veritable Daniel in its behalf.

End of report from a strange world. Dorothy joins in sending love to you all; do write your reactions--and also how I can be of help in any campaign you want to launch against Henry stal. 

al

11792

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August 2, 1957

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11793 xx

Dear Al:

I had known for some time that there was an approved list of organizations in the CIO, however I was deeply shocked to learn that the AF of L, CIO maintained its own index of "subversive" organizations, and that the SCEF was on it.

I feel that we have an important job cut out for us. For some time, Aubrey and I have had it in mind to do some systematic cultivation of the appropriate persons in the labor field. I feel confident that given sufficient time and patient groundwork, that if your information is correct, that the SCEF can be given the blessing of the top labor officials.

Part of our difficulty has been the limitations of time in a one man office. I have been unable to do the personal work that is required to change this picture. Part of our problem, as you know, is that we have inherited a deep opposition on the part of certain top leaders to the old SCNW, which was transferred to the SCEF. Now that we will have soon the help of the Bradens, I hope we will be able to devote more time to this task.

In the meantime, I hope you can hang on to your job with the precept that your brilliant work as an editor and P. R. man will make you indispensable, and so eventually enable advocates of the SCEF and that it stands for *for a better Sharkey, for* *with a*

The vote early this morning on the jury trial amendment was probably inevitable. Our battleground, in any case, is now S. Rule 22 in January, 1959.

This morning in looking over our file of our more generous contributors, I noted the name of Charles Bulger, 75 Harrison Road, Akron 3, who contributed \$25.00 in April, 1956. He might be somebody you'd like to know and personal contact would probably be helpful to the Fund.

It was most generous of you to send your contribution of \$10.00 to help with the cost of the WASHINGTON ad. We have received to date, a little over \$500.00 for that purpose.

With love to you all,

Sincerely,

Mr. Alfred Maund

BY MR. ROGERS:

Very much so, yes. The next comment on the SCEF from a liberal source, Mr. Chairman, is this letter which I hold in my hand from the late Edgar B. Stern, Sr., of New Orleans, which I offer for the record. The last paragraph in this letter shows Mr. Stern's recognition of the true nature of the SCEF, which in 1948 was still known as the SCHW. The letter is dated January 24, 1948. It was found in the SCEF files, and I will read the last paragraph to the Committee. It is addressed to James A. Dombrowski, signed with the signature of Edgar B. Stern.

"I note your suggestion that you would like an opportunity to meet and talk with me about problems concerning the South. In answer, I must say to you frankly that I find myself so far apart from the methods and practices of the Southern Conference For Human Welfare that I doubt whether we could accomplish much by an interview, but if you desire it, I should be entirely willing to meet you at our mutual convenience if you would give me a ring." Signed, Edgar B. Stern.

BY SEN. KNOWLES:

Let it be received.

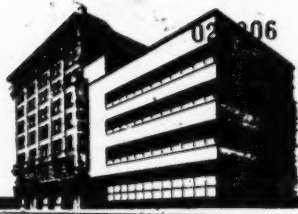
BY MR. ROGERS:

I next offer for the record, Mr. Chairman, 3 letters from Mrs. Eleanor Roosevelt, all addressed to James A. Dombrowski, and found in his files. The first one comments on her withdrawal from the SCEF. Our report #4 contains some detailed correspondence establishing clearly that Mrs. Roosevelt left the SCEF because Communists were in it and were taking part in its management. The second two letters discuss Virginia Durr, a former Vice-President of the SCEF who was well identified in 1954 as a Communist fellow-traveler. Mrs. Durr refused to answer questions about her Communist Front record and associations with various well-known Communists in the face of testimony concerning her close association with various officers of the Communist Party. The two letters show that Mrs. Roosevelt was well aware of the danger posed by the Communists to the Civil Rights Movement. I offer these to the Committee.

(MR. ROGERS READS THE LETTERS INTO THE RECORD.)

The Atlanta Journal THE ATLANTA CONSTITUTION

PUBLISHED BY
ATLANTA NEWSPAPERS, INC.
BOX 4689



RALPH MCGILL
Editor, Atlanta Constitution

ATLANTA 2, GEORGIA

December 10, 1953

Honorable Aubrey Williams
Publisher, Southern Farmer
Montgomery 1, Alabama

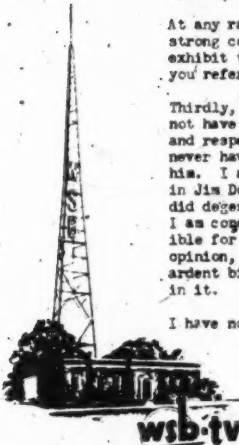
Dear Aubrey:

First off, it seems to me your letter is a little vulnerable. Obviously, if Dombrowski wanted to make advertising use of one of my columns, I haven't gone over to the mob. Therefore, I can't quite follow your long lament and your suggestion that I have succumbed to fear. If you are willing to spend money to advertise the fact that I had acted courageously in one breath, I don't quite see how you can in the next one mourn my fear.

At any rate, I put next in evidence my frequent, and I believe, strong condemnation of McCarthy and McCarthyism as further exhibit that I have not at all gone over to the mob to which you refer.

Thirdly, now let me say just as firmly as I can that I do not have any idea of denying you. I will always admire you and respect you, but with Jim Dombrowski it is different. I never have accepted him, and I, therefore, don't have to deny him. I am awfully sorry to say so, but I have no confidence in Jim Dombrowski. The Southern Conference for Human Welfare did degenerate into a Communist front outfit, and as far as I am concerned, Dombrowski is one of those chiefly responsible for allowing it to do so. He and Clark Foreman, in my opinion, betrayed Mark Ethridge and Barry Bingham by an ardent bit of fellow traveling with the Communists who were in it.

I have no idea whether Dombrowski is a Communist, but I have



Page 2

Honorable Aubrey Williams

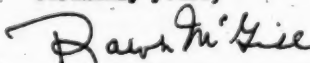
020807

no slight doubt but for at least 25 years he has, in my opinion, been running with that pack. You say you have been hissed off the stage by Communists on at least two occasions. You will never find where Dombrowski was hissed off any stage by any Communist.

So as far as I am concerned, the Southern Conference Education Fund was set up after the Southern Conference for Human Welfare died and, as usual, a number of sincere people were pulled into it. If this disappoints you I am sorry. I am going right on opposing McCarthyism, and I hope I will go on writing columns which the Southern Conference Education Fund might like to run as paid advertisements. But I am also going right along believing that the Southern Conference Education Fund is, as far as Dombrowski can make it, a fellow traveling outfit, and I repeat again, I want no association with it, however indirect or remote. If this hurts you, Aubrey, I am sorry, but that is the way I feel about Dombrowski.

I must add that I wouldn't know him if he walked in the room. It seems to me that I did meet him a good many years ago, but I do not recall what he looks like, nor do I know a single one of his associates, friends or relatives; therefore, I can say very emphatically that I bear him no personal ill-will, nor do I have any malice in my heart for him. I simply do not trust him, nor do I have any confidence in his political integrity.

Cordially yours,



Ralph McGill

RM:gl

CLASS OF SERVICE
This is a full-rate Telegram or Cablegram unless its deferred character is indicated by a suitable symbol above or preceding the address.

WESTERN UNION (22)

SYMBOLS
DL=Day Letter
NL=Night Letter
LT=International Telegram
VLT=Very Long Telegram

W. P. MARSHALL, PRESIDENT

The time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination.

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JAMES A DOMBROWSKI, DIRECTOR SOUTHERN CONFERENCE EDUCATIONAL
FUND INC=322 PERDIDI ST NRLNS=1

I AM HAVING A NOTARIZED COPY OF THIS WIRE MADE. I REGRET IT.
BUT IT IS NECESSARY FOR ME TO EMPHATICALLY REFUSE PERMISSION
TO REPRODUCE IN ANY MANNER WHATEVER IN ANY OF YOUR
PUBLICATIONS THE COLUMN TO WHICH YOU REFER. I ALSO MUST
EMPHATICALLY REFUSE PERMISSION TO USE IT AS AN ADVERTISEMENT.
I ALSO NOTIFY YOU IN ADVANCE THAT I WILL TAKE LEGAL ACTION
IF ANY SUCH USE IS MADE OF IT BY YOUR ORGANIZATION WHICH

I CONSIDER TO BE A FELLOW TRAVELLING OUTFIT WITH WHICH I
WISH NO ASSOCIATION WHATEVER HOWEVER INDIRECT OR REMOTE=
RALPH MCGILL EDITOR ATLANTA CONSTITUTION=

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

Exhibit 19. Telegram from Ralph McGill to James Dombrowski

70
EDGAR B. STERN
THE AMERICAN BANK BUILDING
NEW ORLEANS 12

130886

January 24, 1948

Mr. James A. Dombrowski,
Director,
Southern Conference Educational Fund,
806 Perdido St.,
New Orleans, 12, La.

Dear Mr. Dombrowski:

I regret the delay in answering your letter of the 2nd instant, but I have been under exceptionally heavy pressure in my schedule of late, and I did not sooner have a chance to read the special issue of the SOUTHERN PATRIOT which you enclosed with your letter. In that publication you have attempted to cover a very large field about which much has been written and spoken. I think all right thinking people regret greatly the backwardness of Negro education. You doubtless know that there is another side to the picture, and that is the comparative paucity of available tax funds in the Southern states as compared to the rest of the nation. You, I am sure, have seen the figures that show that some of the Southern states spend a larger percentage of their tax funds for education than many other sections of the country.

You have not pointed out in this publication some encouraging signs of a hope for improvement in this situation. I have lived in New Orleans all my life and I was immensely impressed by a recent report of the Citizens Committee that out of a \$40,000,000 fund for the modernization of our school system in this city, \$25,000,000, or five-eighths, should be spent for Negro schools. I don't know whether this will be carried out, but a few years ago such a proposal would not have been made, or seriously considered.

I must confess that I am somewhat startled at a paragraph on page 8 of the issue of the SOUTHERN PATRIOT that you sent me, wherein it is stated under the heading "The International Problem": "The U.S. today is bidding with Russia for leadership in a world of 2,000 million colored and 700 million white persons. Will the teeming millions of such dark-skinned countries as India, China, Korea, be impressed by either the politics or the religion of a nation that grants to its pigmented population only a second-class citizenship, as against a nation that in 25 years wiped out all racial discrimination?"

I would say without hesitation that the most humble Negro in America has greater security of life and person than any citizen of Russia or of its satellite countries.

Exhibit 20. Letter to James Dombrowski from the late Edgar B. Stern,
of New Orleans, La.

71
13087 ←
Page 2 - Mr. James A. Dambrowski - 1.24.45

I note your suggestion that you would like an opportunity to meet and talk with me about problems confronting the South. In answer I must say to you frankly that I find myself so far apart from the methods and practices of the Southern Conference for Human Welfare that I doubt whether we could accomplish much by an interview, but if you desire it, I should be entirely willing to meet you at our mutual convenience, if you will give me a ring.

Very truly yours,

Edgar A. Stern

KHS:arn:mj

BY SEN. KNOWLES:

Let them be received.

BY MR. ROGERS:

These 5 liberal sources all criticizing the SCEF and its leadership and recognizing the Communist Front nature of the SCEF, can hardly be called racists, or extremists, or witch-hunters. Other so-called liberals should take note of this and consider it carefully.

As a final note on this point I offer a letter from Aubrey Williams to Dombrowski quoting Arthur Schlesinger on the connections of Dombrowski, which shows that some Liberals are unable to accept the facts even when they are fully aware of them.

(MR. ROGERS READS THE LETTER INTO THE RECORD.)

BY SEN. KNOWLES:

Let it be received.

BY MR. MOORE:

Mr. Rogers, just what kind of operation has the Southern Conference Educational Fund carried out? What have they been doing as to the general public, rather than as to other Front organization?

BY MR. ROGERS:

Senator, I have here some examples of the general public functions of the Southern Conference Educational Fund. Here is a clipping from a Lynchburg, Virginia newspaper of March 29, 1963. The headline on this is, "Accused Communist Seeks To Use Wansley Rape Case," and this clipping tells how Carl Braden, who is the Field Organizer of the Southern Conference Educational Fund, has interjected himself and his organization into a rape case in Lynchburg, Virginia. Apparently, the purpose of this is to gain publicity and gain a reputation for doing good works for the Southern Conference Educational Fund. I can't personally rationalize why else a Communist would be interested in a rape case, when there was no known connection with the accused in the matter. I offer this into the record, this is a sample of what they do.

BY SEN. KNOWLES:

37
MRS. FRANKLIN D. ROOSEVELT
30 EAST 70TH STREET
NEW YORK CITY, 21, N. Y.

de R
007915

April 18, 1960

Dear Mr. Dombrowski:

Thank you very much for your letter.

I will not make any public announcement of my decision and I would hope that none need be made. Just drop my name from your literature.

When you come to New York, I will always be glad to see you, but don't make a special trip.

With every good wish,

Very sincerely yours,

Eleanor Roosevelt

Exhibit 22. Letter from Eleanor Roosevelt to James Dombrowski concerning her withdrawal from the SCEF.

VALL-CELL COTTAGE
1475E PARK, DUTCHESS CO.
NEW YORK

12830

May 11, 1947

My dear Mr. Dombrowski:

In answer to your letter of April 23rd, I feel I should write you quite frankly as to my feelings.

I think the idea of the Southern Conference for Human Welfare is basically sound, and provides a method by which Southerners can speak out.

I think recently that some of your associations have given your enemies a chance to label ~~you~~ communist and it seems to me that you should have avoided giving your enemies the basis for such a charge.

In the case of the Columbia, Tenn. episode, I understand that Mrs. Durr refused to serve with the NAACP unless the communist party was represented on the Committee. Under other conditions, that might have been a good thing, but the situation there was difficult enough without giving the opposition additional ammunition.

VALL-CELL COTTAGE
1475E PARK, DUTCHESS CO.
NEW YORK

12831

I have heard from many people that the Conference, perhaps because of necessity, was devoting itself to the raising of funds instead of concentrating on the real job.

I tried working with American communists, as you know, and have long since given up trying. I can not work with any one who is not completely honest and American communists are not honest. I know that often they work for the same objectives, and do good work, but that does not alter my opinion.

Very sincerely yours,

Eleanor Roosevelt

APARTMENT SIX-A
29 WASHINGTON SQUARE WEST
NEW YORK 11, N. Y.

June 11, '47

128336

My dear Mr. Dombrowski:

Thank you for your letter of June 5th. I think Mrs. Durr's letter is a rather foolish letter.

What Walter White said was perfectly true. If the defense had not been left in the hands of the N.A.A.C.P. without communists, certainly that would have been seized on as an excuse to add to the troubles of the defense.

Theories are wonderful and ideals are marvelous but Mrs. Durr's last paragraph leaves me cold in the face of the facts of the situation.

I shall be glad to see you and talk to you if the opportunity arises.

Very sincerely yours,

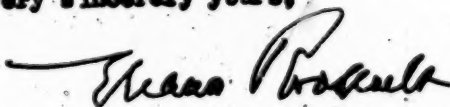


Exhibit 24. Letter from Eleanor Roosevelt to James Dombrowski further discussing Virginia Durr.

021036

SOUTHERN FARMER
MONTGOMERY 1, ALABAMA

AUBREY WILLIAMS
PUBLISHER

Wednesday May 26 1954.

Dear Jim:

Lister Hill called Cliff yesterday and told him that he thought we had heard the last of the Jenner Com. He said of course he could not be sure but that from what he had been able to find out that it was his feeling that we would not hear anything more about it, or be called any more.

Had a letter from Mrs Roosevelt about two weeks ago enclosing letter from Arthur Schlessinger which she said disturbed her very much. In it Sch-- said that while he had great admiration for you, that still he had to say that you had run with so many questionable organizations that you were easy meat for Congressional committees. He said that even if you did run with such he nevertheless would always want to be known as your friend. Well I wrote her, and this is a reply by Neibur--he too had written Mrs R. along the same vein as Sch--. I think that everything is alright, and I am happy to tell you that I simply portrayed you as you are without apologies. I am glad Neibur says he agrees. I regret that Mrs R. felt any necessity to ask for my opinion, but those pannywaistes are to blame.

Warmest regards.

Am

Exhibit 25. Letter from Aubrey Williams to James Dombrowski concerning Arthur Schlessinger.

Let it be received.

BY SEN. MOORE:

This rape was committed by a negro in Virginia?

BY MR. ROGERS:

That is what he was charged with.

BY SEN. MOORE:

And an attempt is made, evidently, to do some good on behalf of the negro in the name of the SCEF?

BY MR. ROGERS:

That's correct, Senator, that's exactly what it is.

I next offer a copy of a hand-bill sent out by the Southern Conference Educational Fund in August, 1964, addressed to: "Friends of SCEF everywhere, from the Rev. Fred L. Shuttlesworth, President." It is on the stationery of the SCEF, and it lists several items of current Southern Conference Educational Fund activities.

(MR. ROGERS READ THE DOCUMENT TO THE COMMITTEE.)

BY SEN. KNOWLES:

Let it be received.

BY MR. ROGERS:

The next item, in answer to your question, Senator Moore, is this brochure on a conference held in Birmingham, Alabama, on April 13 and 14, 1962. This was a conference on "The Deep South, Ways And Means To Integration." The sponsors are: The Alabama Christian Movement for Human Rights. (this is headed up by Fred Shuttlesworth who is also the President of the SCEF); The Student Non-Violent Coordinating Committee; and the Southern Conference Educational Fund, Inc. The Committee will note that throughout this thing, the people who speak on the subject of the ways and means to integration are people who have records of Communist Front affiliation, or worse, including Carl Braden, a well identified Communist, who spoke on getting better and fuller coverage in the news media. A fairly large number of people at-

THE DAILY ADVANCE

LYNCHBURG, VA., FRIDAY EVENING, MARCH 29, 1963

15 004926

Accused Communist Seeks To Use Wansley Rape Case

By JAMES MURDOCK

An accused Communist and notorious propagandist of Communist causes has seized on the appeals case of convicted rapist Thomas Carlton Wansley as grist for his Communist front organization.

Carl Braden, accused Communist and convicted for contempt of the U. S. Congress, came to Lynchburg this week and announced he was going to make "a national issue" of the appeals case of Wansley, 18-year-old Negro sentenced to two death penalties for raping two Lynchburg women.

Braden, a member of the staff of the Southern Conference Educational Fund, Inc., cited as a Communist front, told Police Chief R. O. Evans he was a newspaperman.

He said he represented the Southern Patriot (published by the Southern Conference Educational Fund) and the York, Pa., Daily Gazette.

Braden demanded police photographs of Wansley and the names of the psychiatrists who testified at his two trials. During his conversation with Evans, Braden said he, also, was going to talk with Dr. J. Kenneth McFarland, Randolph-Meason Women's College

professor and a former vice president of the Virginia Council on Human Relations.

Braden attended a banquet at the Hampton Branch YMCA on Monday night in company with the Rev. Virgil A. Wood, Negro pastor of Diamond Hill Baptist Church and head of the Lynchburg branch of the Southern Christian Leadership Conference headed by Dr. Martin Luther King. King has endorsed the SCEF for giving "new hope" in the integration fight.

Wood is listed as a member

of the board of directors of the Communist front SCEF, along with Leonard W. Holt Jr., Norfolk Negro attorney who represented Braden when Braden refused to testify on Feb. 9, 1961, before the Florida Legislative Investigations Committee in Tallahassee. Braden took refuge behind the First Amendment to the Constitution then. The committee was tied up in litigation challenging its authority to investigate alleged communism in the Miami chapter of the National Association for the Advancement of Colored People (NAACP).

Holt also represented Wood when Wood filed an "omnibus" suit demanding integration of all public facilities in Lynchburg, and represented 17 of the 18 persons convicted here of trespassing in sit-in demonstrations. Wood was one of those convicted. The cases are under appeal and are before the U. S. Supreme Court.

Reuben Lowman, Roanoke Negro attorney who successfully brought suit to force the admission of four

Negro students to previously all-white E. C. Glass High School, represented Wansley in his two rape trials, each of which ended in a sentence of death. Lowman, however, died of a heart attack last week.

At the time, he was being assisted in the appeal to the Virginia Supreme Court of Appeals, by William M. Kunstler, white New York City lawyer. Kunstler says the Wansley case is being appealed on constitutional issues—the segregated courtroom.

Braden recently attempted to get photographs of Wansley from the Lynchburg newspapers and before that, in 1961, attempted to obtain copies of the photographs printed in The Daily Advance of the six college students convicted of the December, 1960, sit-in demonstrations. Four of the students were white, two from Randolph-Meason Women's College and two from Lynchburg College.

Braden was convicted in the federal court in Atlanta and sentenced to a year's imprisonment for refusing to testify before the

(Turn to Page 18, Col. 6)

Accused

(Continued from Page 15)

House Committee on Un-American Activities. His conviction was upheld by the U. S. Supreme Court.

The Justice Department, told the court at the time:

"The committee had information that the petitioner (Braden) was a Communist party member active in propaganda and other party work in the South; that he was connected with the Southern Conference Educational Fund, the Emergency Civil Liberties Committee, and the Southern Newsletter; and that these three organizations were Communist controlled or at least heavily infiltrated and were engaged in Communist propaganda and other work."

The Congressional Record of May 1, 1962 identifies Carl Braden as a field secretary of the Southern Conference Educational Fund, Inc. This organization was cited as a Communist front by the Senate Internal Security Subcommittee in 1956. It was also cited as a Communist front by the Special Committee on Un-American Activities of the House of Representatives in 1964 and by the Committee on Un-American Activities of the House of Representatives in 1947.

According to the Guide to Subversive Organizations and Publications, published December 1, 1961, by the Committee on Un-American Activities of the House of Representatives, the Southern Conference for Human Welfare is "a Communist-front organization which seeks to attract southern liberals on the basis of its seeming interest in the problems of

the South although its professed interest on southern welfare is really an expedient for helping firms serving the Soviet Union and its subordinate Communist Party in the United States."

The Southern Patriot is a publication originally published by the Southern Conference for Human Welfare and now published by the Southern Conference Educational Fund, Inc. It is cited as a Communist or Communist-front publication in the Guide to Subversive Organizations and Publications.

Braden is presently utilizing stationery carrying the names of both the Southern Conference Educational Fund, Inc. and the Southern Patriot. Braden has been identified as a member of the Communist party before the House Committee on Un-American Activities. He served the sentence for contempt of Congress in 1961 and 1962. He was also convicted by the Florida courts of contempt of the Legislature of the State of Florida and an appeal was refused by the Federal Supreme Court.

Southern Conference Educational Fund, Inc.

PUBLISHERS OF The Southern PATRIOT FOUNDED IN 1942

August, 1964

822 PERDIDO STREET, NEW ORLEANS, LOUISIANA 70112 • Area 504 525-7226

TO: Friends of SCEF Everywhere

FROM: The Reverend Fred L. Shuttlesworth, President

• **UPSIDE-DOWN JUSTICE - The Albany Cases** - When you have read the enclosed pamphlet we think you will want to help correct this disturbing instance of upside-down justice. We urge you to give support to the National Committee for the defense of the Albany Defendants. Inserted in the pamphlet is a copy of a petition you may wish to help circulate.

SCEF has prepared and distributed this pamphlet as part of its support for the grassroots movements in the South.

Other current activities include:

➤ • **Mississippi Freedom Democratic Party** - Ella J. Baker, SCEF Special Consultant, is working with the Freedom Democratic Party as coordinator of SWCC's Washington office. ... SCEF board member, Ed Hamlett recruited 20 white Southern students to work with the white community in the COFO Summer Project.

• **Halifax County** - Mounting Ku Klux Klan activity in Halifax County, N. C. prompted John M. Salter, Jr., SCEF Field Organizer, to ask for federal and state protection from "racial terrorism". ... A first round victory was won in the case of Willa Johnson, Halifax County school teacher fired for registration work. Judge Larkin issued an order preventing the school board from hiring her successor pending the outcome of the next hearing August 31. SCEF attorneys, Kunstler & Kinoy, and M. Stavis are handling the case.

➤ • **SCEF Legal Cases** - The U. S. Supreme Court has agreed to rule on the SCEF challenge to the constitutionality of the Louisiana "anti-subversion" statutes. The ACLU, the National Lawyers Guild, and the NAACP Legal Defense and Educational Fund, Inc. have asked permission to file briefs amici curiae.

SCEF's damage suit against Senator Eastland, J. G. Sourvine et al was appealed in July to the U. S. Court of Appeals for the District of Columbia.

➤ We have heard that SCEF's records, after being photo-copied, have been returned by Senator Eastland and his Subcommittee to the Louisiana Un-American Activities Committee. It may be significant that the Louisiana Committee's budget has just been cut from \$60,000 to \$10,000.

Finances - These activities are the least the SCEF can do toward fulfilling its traditional mission, but the cost is heavy - and has placed great strain on the Fund's resources.

If you have not sent a contribution to the Fund recently, perhaps you would like to send a generous check now. The need is urgent. A return postpaid envelope is enclosed for your convenience.



tended this particular conference, and this was the prelude to the violence and serious racial unrest in Birmingham, Alabama; this particular conference right here. We offer this into the record, Mr. Chairman.

BY SEN. KNOWLES:

Let it be received.

BY MR. ROGERS:

The next item in this respect, Senator Moore, that I would like to offer the Committee, is a letter dated July 18, 1960 to James A. Dombrowski from William Howard Melish, the eastern representative of the SCEF. This letter from the files of the SCEF shows the SCEF's knowing connections with a man named Doxie Wilkerson, who has been identified in the past as a member of the National Committee of the Communist Party, U. S. A. Melish, of course, as I told you, was identified as a Party member in hearings before the Subversive Activities Control Board. Melish set up a session in New York for 50 people and presented to them Doxie Wilkerson, this other Communist. This particular letter is an accounting to Dombrowski of what happened at this meeting, what they did there, and generally what the Communist, Doxie Wilkerson, told these 50 people who attended. This was one of their little side functions which they set up gratis wherever they happened to be working.

BY SEN. KNOWLES:

Let the letter be received.

BY MR. ROGERS:

In March and April of 1960, the Southern Conference Educational Fund through Dr. M. K. Curry, Jr., of Marshall, Texas, and Dr. C. O. Simpkins of Shreveport, Louisiana, took part in carrying out certain allegedly "spontaneous" demonstrations by colored students in Marshall, Texas. The NAACP played a strong part in these demonstrations, as did an admitted Communist, this same Doxie Wilkerson, of whom I have just spoken. Wilkerson at that time was a faculty member at Bishop College in Marshall, Texas. Wilkerson is a former member of the National Committee of the Communist Party, U. S. A., with a long record of Communist activity, including serving on the faculty of the Jefferson School

**CONFERENCE ON
THE DEEP SOUTH:
WAYS AND MEANS TO INTEGRATION
FRIDAY-SATURDAY, APRIL 13-14, 1962**



HEADQUARTERS:
St. Paul Methodist Church
1500 Sixth Avenue, North Birmingham, Alabama
Rev. J. C. Wilson, Pastor

★ ★ ★

SPONSORS:
ALABAMA CHRISTIAN MOVEMENT FOR HUMAN RIGHTS
STUDENT NON-VIOLENT CO-ORDINATING COMMITTEE
SOUTHERN CONFERENCE EDUCATIONAL FUND, INC.

★ ★ ★

HOST:
**THE ALABAMA CHRISTIAN MOVEMENT
FOR HUMAN RIGHTS**

★ ★ ★

THEME:
**"RELIGION AND THE STRUGGLE FOR CIVIL RIGHTS
AND CIVIL LIBERTIES."**

Exhibit 29. Cover of Brochure on April 13-14, 1962, Birmingham "Conference"
sponsored by the SCEF.

BISHOPS' NIGHT, Friday, April 13, 1962

7:30 P. M.

→ **BISHOP EDGAR A. LOVE** Chairman
Bishop Baltimore Area, The Methodist Church
President, Southern Conference Education Fund, Inc.

MUSIC Guy Carawan (Folk Singers)

WELCOME AND PRESENTATION OF THE CHAIRMAN:
The Rev. Edward Gardner First Vice-President
Alabama Christian Movement For Human Rights

READING OF SCRIPTURE The Rev. J. H. Calloway,
Pastor, Tabernacle Baptist Church

INVOCATION The Rev. C. Woods,
Pastor, East End Baptist Church

GREETINGS—(2 minutes each):

BUSINESS Mr. L. S. Gaillard, Jr.
President, Gaillard Company

Dr. Otis J. Williams Manager, Citizens Walgreen Drug Agency

EDUCATION Mrs. L. B. Robey,
Principal, Dudley School

LABOR Mr. Arbury Howard,
Eastern Vice-President, International Union of Mine, Mill and Smelter Workers

LAW Atty. Ernest D. Jackson
Jacksonville, Florida

RELIGION The Rev. J. L. Ware,
President, Birmingham Baptist Ministers Conference,
President, Inter-Citizens Committee

YOUTH Mr. Nathaniel Lee,
Organist, Director of Movements Choir

MUSIC The Alabama Christian Movement For Human Rights Choir

AWARD Statement by Mr. Aubrey W. Williams,
President Emeritus, Etc.

RESPONSE The Rev. F. L. Shuttlesworth
President, Alabama Christian Movement For Human Rights

STATEMENT Mr. W. E. Shortridge,
Treasurer, Alabama Christian Movement For Human Rights

PRESENTATION OF MAIN SPEAKER Dr. L. H. Pitts,
President, Miles College

ADDRESS DR. HOWARD SCHOMER,
President, Chicago Theological Seminary,
President, International Fellowship of Reconciliation

COMMENT—(5 minutes each) Panel of Bishops

Bishop S. L. Greene Bishop C. Eubank Tucker

Bishop W. M. Smith Bishop Jasper Roby

BENEDICTION Rev. J. C. Wilson,
Pastor, St. Paul Methodist Church

SATURDAY, April 14, All-Day Workshop Sessions

"Techniques For Action"

9:00 A. M.—BRIEF OPENING SESSION

PRESIDING OFFICER: THE REV. FRED L. SHUTTLESWORTH ↗

President, Alabama Christian Movement For Human Rights

9:15-11:30 A. M.—WORKSHOPS—(Two running concurrently)

1. How Can We Carry On Effective Voter Registration Campaigns?

Chairman: W. P. MITCHELL Secretary, Tuskegee Civic Association
Tuskegee Institute, Alabama

Resource People: HOSEA L. WILLIAMS President
Southwest Georgia Crusade for Voters, Savannah, Georgia

BOB MOSES Field Secretary,
Student Non-Violent Co-ordinating Committee, Jackson, Mississippi

CHARLES JONES Field Secretary, SNCC
Albany, Georgia

MILES HORTON Director, Highlander Center,
Knoxville, Tennessee

2. How Can We Obtain and Implement Court Decisions Favorable To Integration?

Chairman: THE REV. C. T. VIVIAN Executive Committee, ↗
Chattanooga Council for Cooperative Action;
former Vice-President, Nashville Christian Leadership Council

SUB-TOPIC I:

LAW FOR THE LAYMAN; OMNIBUS SUITS

Resource People: LEN HOLT Civil Rights Attorney,
Norfolk, Virginia

ERNEST D. JACKSON, SR. Civil Rights Attorney,
Jacksonville, Florida

SUB-TOPIC II:

COMMUNITY ACTION: APPEALS TO CONSCIENCE

Resource People: MISS RUBY DORIS SMITH Executive Secretary,
Committee on Appeal for Human Rights, Atlanta, Georgia

THE REV. EZEKIEL BELL Chairman,
Community Service Committee, Huntsville, Alabama

D'ARMY BAILEY Student Freedom Committee,
Baton Rouge, Louisiana

WILLIAM HANSEN Field Secretary, SNCC,
Cambridge, Maryland

THE REV. WILLIAM B. ABBOTT Secretary,
Interracial Fellowship of Norfolk, Virginia

THE REV. C. HERBERT OLIVER Secretary,
Inter-Citizens Committee of Birmingham; Instructor at Miles College

Exhibit 31. Third page of Exhibit No. 29.

12:30- 1:30 P. M.—LUNCHEON—

1:30- 2:00 P. M.—REPORTS FROM MORNING WORKSHOPS

2:00- 5:00 P. M.—WORKSHOP:

"How Can We Inform and Involve More People in the Integration Movement?"

Chairman: JAMES FOREMAN Executive Secretary,
Student Non-Violent Coordinating Committee, Atlanta, Georgia

SUB-TOPIC I:

GETTING BETTER AND FULLER COVERAGE
IN THE NEWS MEDIA

Resource People: GOULD MAYNARD Public Relations Director,
Southern Christian Leadership Conference, Atlanta, Georgia

→ CARL BRADEN Field Secretary,
Southern Conference Educational Fund;
Associate Editor, The Southern Patriot, Louisville, Kentucky

JAMES R. WOOD Public Relations Director,
Capitol Radio, Atlanta, Georgia

SUB-TOPIC II:

PROTECTING OUR RIGHT TO SPEAK AND
ESTABLISHING CIVIL LIBERTIES

→ Resource People: BENJAMIN E. SMITH Attorney
Louisiana Civil Liberties Union;
→ Treasurer of SCEF, New Orleans, Louisiana

MISS ELLA I. BAKER Consultant in Human Relations,
Southern Region, YWCA

SUB-TOPIC III:

ACTIVATING THE CONVINCED AND INFLUENCING
THE UNCONVINCED

Resource People: HENRY THOMAS Field Secretary,
Congress of Racial Equality, St. Augustine, Florida

THE REV. MURRAY COX Chairman,
Mississippi Advisory Committee to the U. S. Commission on Civil Rights

→ THE REV. JAMES ZELLNER Methodist Minister,
Century, Florida

THE REV. KELLY MILLER SMITH President,
Nashville Christian Leadership Council

THE REV. JOSEPH ELLWANGER Pastor,
St. Paul Lutheran Church, Birmingham, Alabama

→ MRS. CLARICE CAMPBELL Instructor,
Claflin College, Orangeburg, South Carolina

Exhibit 32. Fourth page of Exhibit No. 29.

Southern Conference Educational Fund, Inc.

PUBLISHERS OF The Southern PATRIOT

822 PERDIDO STREET, NEW ORLEANS 12, LOUISIANA • JACKSON 2-7226
305 St. Mark's Ave., Brooklyn 13, N. Y. : IN. 7-1196

027909

July 18, 1960

President
Anthony W. Williams

Vice-Presidents
Dr. Herman H. Long
Wiley G. A. Lee
Stephen A. Riddle

Secretary
Dr. James L. Hays

Assistant Secretary
Mrs. Fred Engel

Treasurer
Stephen E. Smith

Executive Director
James A. Dombrowski

Field Secretaries
Anne Braden
Cory Braden

Dear Jim,

The party last night at the home of Lillian and Joe Miller on Fire Island went off agreeably. The weather was beautiful, about 80 people attended, and the response was cordial.

Marietta Dockery, daughter of a dentist friend of the McLanes, went down with me and described simply and effectively the sit-in demonstrations in Nashville in which she, as a Fisk student, played a part.

Dorsey Wilkerson, who was weekending with the Howard Selmons on Fire Island, briefly described his impressions gained at Bishop College in Marshall, Texas, and drew a few, clear, discriminating conclusions.

I supplemented both presentations and spoke of the work of the Fund, making the appeal.

The contributions paralleled those of last year, as detailed on the attached sheet.

There were two differences. (a) Several people told me they had just sent in contributions in response to the South Carolina Project appeal letter and hence were not again contributing—at least two such, including Clara Rabinowitz. (b) There were no heavy expenses as there were last year, Anne Braden's plane fare, for example. The costs were only my previous invoice for one visit to Fire Island and the invoice attached, so that the net profit is a fair bit more than last year. And, in addition, I made one contact that promises a party in the city in the autumn.

Will you drop a note of thanks to Mr. and Mrs. Joseph Miller, Sea View, Ocean Beach P.O., Fire Island, N. Y., for the use of their home and a personal \$50 contribution.

As always,

Dr. James A. Dombrowski

Exhibit 33. Letter from William Howard Melish to James Dombrowski in re activities of the SCEF in New York.

of Social Science, which was placed on the list of subversive organizations by the Attorney General of the United States, and cited as an "adjunct of the Communist Party." Dr. Curry, the Bishop College President who employed Wilkerson, has been connected with the SCEF through his serving as a sponsor of an SCEF conference at Columbia, South Carolina in 1953. He publicly defended Wilkerson during the demonstrations. Dr. C. O. Simpkins has had extensive connections with the SCEF, having been a member of the Board of Directors of the SCEF during 1960 and 1961. During the demonstrations, Dr. Simpkins is reported by the Texas authorities to have had lengthy telephone conversations with Dr. James Dombrowski and the Rev. Fred L. Shuttlesworth, Executive Director and President, respectively, of the SCEF. The students in the demonstration stated in a press conference that they were getting advice on how to do things from Dr. Simpkins. At the same time, Simpkins is reported to have had other long telephone conversations with various student leaders of the demonstrations, and also with one A. P. Watson, an officer of the NAACP in Texas, and a teacher at Wiley College in Marshall. Simpkins and Wilkerson jointly presided over various student meetings in Marshall, and instructed the students in the technique of demonstrations. The NAACP part in the demonstrations was encouraged by Roy Wilkins at a large NAACP meeting in Dallas on March 5, 1960. At this meeting, Daisy Bates of Little Rock, Arkansas, and Roscoe Dunjee of Oklahoma City were awarded honorary plaques by the NAACP. Dunjee and Daisy Bates' husband, L. C. Bates, are both members of the Board of Directors of the SCEF, and Dunjee is also a member of the Board of Directors of the NAACP. The NAACP took further part in this cooperative effort with the SCEF in the form of about \$70,000 cash for a bail fund put up by the NAACP, delivered on March 21, 1960 by NAACP regional attorney Walter J. Durham, and NAACP attorney, C. B. Bunkley. Bunkley's law partner, Romeo Williams, was identified as a leader of the demonstrations.

Clarence A. Laws was at that time the Field Secretary of the NAACP in Dallas. Laws has been connected with the SCEF since way back in 1947, when that organization was known as the Southern Conference For Human Welfare. It had been cited as a Communist Front 3 years before that, incidentally. In 1947 Laws was listed on the letterhead of the organization as a member of the "Executive Committee" of the Southern Conference For Human Welfare. Laws has also been connected in the past with two other Communist Front, or Communist Infiltrated Organizations; namely, the Southern Negro Youth Congress, cited as subversive by the

Attorney General of the United States, and the Committee On Jim Crow In The Military Services, a Communist infiltrated organization. After an extensive investigation and a Hearing by a Military Board of Inquiry, Laws who was then a Major in the Army, was discharged from the U. S. Army on July 20, 1955, under the provisions of Army Regulation 140-175, which authorizes discharge for security reasons "when such action is necessary in the interest of National Security."

The final item, in answer to your question, Senator Moore, is a very recent "Action Memo," addressed to, "Friends of SCEF everywhere," from the Rev. Fred L. Shuttlesworth, President. This memo is being sent out at this moment by the Southern Conference Educational Fund from the New Orleans Office. The whole point of this memorandum which goes to thousands of people, is an attack upon J. Edgar Hoover and the F. B. I., urging that J. Edgar Hoover be removed as director of the F. B. I., because of his criticism of Dr. Martin Luther King. I offer this into the record, Mr. Chairman.

BY SEN. KNOWLES:

Let it be received.

BY REP. DE WITT:

Mr. Rogers, do you have any new evidence in regard to the connection between Dombrowski and any Communist personalities, or groups not discussed in our early reports?

BY MR. ROGERS:

Yes, I do. Mr. Chairman, I would like to offer into the record a letter from the files of the SCEF, on the stationery of the Southern Negro Youth Congress, signed by Modjeska Simkins, who is an officer of the Southern Conference Educational Fund. She has been active in the SCEF from its first founding. Now, the Southern Negro Youth Congress has been well identified as a Communist Front Organization by Congressional Committees repeatedly, time and time again. I call the attention of the Committee to the left margin of this letter, where different names are shown as part of the Advisory Board of the Southern Negro Youth Congress. Five of these people are C. G. Gomillion, who was a director of the SCEF in 1961; James Dombrowski, who is currently the Executive Director of the SCEF; Roscoe Dunjee, a director of the SCEF in 1961; Benjamin E. Mays, Vice-President of the SCEF in 1951; and Mrs. Andrew W. Simkins, or Modjeska Simkins, a Vice-President of

The Southern Conference Educational Fund, Inc.
822 Perdido Street, Room 408
New Orleans, Louisiana 70112

TO: Friends of SCEF Everywhere
FROM: The Rev. Fred L. Shuttlesworth, President

ACTION MEMO - Re: J. Edgar Hoover & the FBI

Some time ago we sent you a copy of "UPSIDE-DOWN JUSTICE, The Albany Cases,"* a documented account of the Georgia police state, of the persecution of nine Freedom Fighters, and of the ineffectiveness of the FBI.

It was this Albany situation which prompted Dr. Martin Luther King, Jr. to declare:

"It is tragic that the only instance in which the Federal Government has moved with vigor has been against Negro leaders who have been working to end the evils of segregation."

J. Edgar Hoover, Director of the FBI, responded to Dr. King's criticism by attacking the integrity and honesty of the beloved civil rights leader; denouncing him as "the most notorious liar in the country."

This intemperate outburst was protested by many civil rights leaders and led at least two of the most influential newspapers in the country to suggest that Mr. Hoover has outlived his usefulness. (See the editorial below from the WASHINGTON POST)

If you, too, feel that Hoover has been in office "too long," please write a letter or send a telegram to President Lyndon B. Johnson giving him your views, and perhaps expressing the hope that Hoover be replaced by a man who will show as much concern for human rights as he does for property rights, and show the same vigor in tracking down those who rob others of their civil rights as he does in apprehending a bank robber.

(* If you would like an additional copy of UPSIDE-DOWN JUSTICE, write to: SCEF, #22 Perdido St., New Orleans, La. 70112)

Thirty Years

Unaccustomed as he is to public criticism, J. Edgar Hoover customarily responds to its occasional expression by impugning the integrity, virtue or patriotism of his critics. Thus, it was quite characteristic of him to denounce Dr. Martin Luther King (who had presumed to question the FBI's effectiveness respecting civil liberties in the South) as "the most notorious liar in the country." It was equally characteristic of him to call the Warren Commission "unfair and unjust" because it had gently chided the FBI for its role in relation to Lee Harvey Oswald and to refer to eminent judges, including members of the Supreme Court as "bleeding hearts" because they took a different view from his own in interpreting certain clauses of the Bill of Rights.

This kind of talk, if it came from any other bureau chief in any other department of the Federal Government, would be generally recognized as insufferable effrontery on the part of a public servant. It is no less than that though it comes from the Director of the FBI. In the same interview, Mr. Hoover let it be known, as he has done with equal candor in the past, that the FBI is tapping something like 80 telephones continuously and is using information obtained from this wire-

sapping in connection with counter-intelligence activities. There is no question that his purposes are patriotic. But there is no question; either, that he is violating an act of Congress.

Mr. Hoover is a subordinate official of the Department of Justice. The Attorney General must, therefore, accept responsibility for Mr. Hoover's extravagant talk and for his extra-legal action. It is time for the Attorney General to exercise authority over a Bureau which has for far too long been run by Mr. Hoover as though it were a sovereign principality.

Mr. Hoover has held his office for 30 years. He has discharged his duties with probity, efficiency and the highest dedication to his country. His record is an admirable one, and Americans owe him great gratitude. But that gratitude cannot properly be expressed by allowing him to abuse his authority. That authority, by reason of its nature and its impact on civil liberty, must be forever subject to restraint. Unhappily, Mr. Hoover has now demonstrated that he has been in office too long. His retirement, when he reaches retirement age on his 70th birthday, would be a contribution to his own high repute and to the welfare of the Bureau he has done so much to develop.

WASHINGTON POST - November 21, 1964

Exhibit 34. Memorandum from the SCEF attacking J. Edgar Hoover.

Wednesday January 11, 1961

026671

Dearest Jim:

There is no fountain of Youth as you know! It was my daughter, Virginia, (Tillah) who went to the meeting with the young man from the NATION.

I have certainly found no Spring, but I must say that my spirit and my heart are much encouraged and lightened by finding so many people here in the South whom I can admire and love. They are still a handful, but precious, and these are the people with whom I feel closest and most congenial. I do think the Southern people who stand up and are counted are braver and better and more courageous than any people I know and in addition they have a quality of grace or humanity that is so often lacking in some of the other "liberals" and Crusaders I have known. Of course I think you typify this aspect better than anyone I know, you have never lost sight of the human element and that is why all of us who know you well love you so much. I hope one day to get back on the Board and have some occasion to meet with you, but with our slim margin or rather man margin at all, Cliff still does not want me to indulge in "public works" and it really delights my Soul to see him taking the lead and also having all of the abuse. For so long, everyone said I was the one that "got him into trouble" and now they have to admit he can get himself into trouble too.

I thought your letter to Albert Barnett was fine and I do hope we can muster some support for these boys here. Imagine the Methodist Church taking such a stand.

As for Mike and Alton, I have written to Mat Witt to ask him the whole story if he will or can give it to me, but he may be prejudiced against them now, but like you, my mind simply staggers under such an idea as Alton and Mike turning informer against one of their old friends. But Paul told me to be careful as he would not be surprised to see Alton turn informer against me and Cliff and you and Aubrey. As I said he was drinking and I am not sure of his story or of him actually at the present time. The days of our youth up at Highlander when we loved and trusted each other seem a long way removed, and I am glad that there are a few of us left who still do. The story he told me about Niles was too awful even to repeat, and is horrifying. It is so painful and sad to have a place or a person whom you have loved to be blackened so that you don't want to think about it and I don't want to believe these awful tales unless I am sure they are true. But with the betrayals I have seen in Washington like Lee Pressman, I am not prepared any longer to say that it cannot happen under pressure.

Aubrey turned over to me this long and rambling account of the young man in Tallahassee and asked me to try to put it into some readable form, as he found it to be hard and rambling to read. I am trying and will send it back to you when I have done so if it is possible, but it is hard as he is so earnest and so confused. Do you want the original too? Let me know about this.

Lots of love and best wishes and do come and see us when you can. I do hope you are better. Devotedly, Va. Durr

Exhibit 36. Letter from Virginia Durr to James Dombrowski.

INTERNATIONAL REVIEW SERVICE

ANALYSIS AND REVIEW OF INTERNATIONAL PROBLEMS

A. C. MEZERIK EDITOR

065498

UN BUREAU: ROOM 352
UNITED NATIONS, NY

PLANA 1-6833
CABLE: UNOVIES

15 WASHINGTON PLACE
New York 3, USA

24 September 1962

Mr. Jim Dombrowski
Southern Conference Educational Fund, Inc.
822 Perdido Street
New Orleans 12, La.

Dear Jim:

I tried Nationwide about Annie Moore, and I have just learned that Nationwide can not write insurance in Cleveland, Mississippi. My people do not have any suggestions and liberal insurance executives are hard to find.

I plan to take up tomorrow your idea of asking Howard K. Smith to speak with Martin Luther King. I'll let you know as soon as I can.

Here's hoping everything goes well.

Cordially,

Avrahm Mezerik
Editor

ACM/rc

Exhibit 37. Letter from Avrahm Mezerik, an identified Communist, to James Dombrowski.

October 1, 1962

Dear Avrahn:

I have just returned from Birmingham and am glad to find your good letter of the 24th.

Happily, I think we have Annie Moore covered, but thank you for your efforts.

Johnny Faulk has agreed to be on the program with King, thus I do not think we will need Howard K. Smith for this particular program.

If you do see him, however, please ask how he would feel about being our principal speaker in New Orleans during Human Rights Week in December.

I will be coming to New York for the week of the 29th of October, and I hope you will be in town.

Love to you and Marie,

Sincerely,

Mr. A. G. Mazerik

the SCEF in 1964. This shows that the SCEF is clearly connected with this other Communist Front group.

BY SEN. KNOWLES:

Let it be received.

BY MR. ROGERS:

I next offer a letter from the files of the SCEF from Virginia Durr, to Dombrowski, dated January 11, 1961, which shows the attitude of Virginia Durr, a former Vice-President of the SCHW and a board member of the SCEF. This letter speaks for itself and comments on several other Communist personalities, well identified as such, with whom Mrs. Durr apparently has very close personal connections, from the tone of this rather lengthy letter.

BY SEN. KNOWLES:

Let the letter be received.

BY MR. ROGERS:

I next offer a letter from the SCEF files dated September 24, 1962, on the stationery of the International Review Service, signed by A. G. Mezerik. Mezerik was well identified as a Communist in 1958 before the Senate Internal Security Subcommittee when he took the Fifth Amendment repeatedly in refusing to answer questions about his Communist Party membership and connections. This letter is short and to the point.

(MR. ROGERS READ THE LETTER TO THE COMMITTEE.)

Here is the answering letter from Dombrowski to A. G. Mezerik, dated October 1, 1962, showing the close personal connection between Dombrowski and this well-identified Communist personality.

BY SEN. MOORE:

Mr. Rogers, is the Howard K. Smith mentioned in those two letters the one connected with the television industry?

BY MR. ROGERS:

Yes, it is, it is the same man.

I next offer a letter from the SCEF files into the record, Mr.

Chairman, addressed to Don West from James A. Dombrowski. Don West is a well-identified Communist Party member who took the Fifth Amendment, as to his Communist Party membership and connections before the Senate Internal Security Subcommittee in 1957. He was a District Director of the Communist Party in North Carolina as far back as 1934 and 1935. He later served the Party in Kentucky, and throughout the Southern United States. Apparently he is a personal friend of Dr. James Dombrowski. This letter would so indicate. I offer it into the record

BY SEN. KNOWLES:

Let it be received.

BY REP. STINSON:

Mr. Rogers, this Simkins woman that you referred to, is she related to the Dr. Simpkins in Shreveport?

BY MR. ROGERS:

No, she is not, as far as we have been able to ascertain. Simkins is her married name.

BY SEN. MOORE:

Q—This Dr. Simpkins from Shreveport, is he not a negro Dentist?

A—This is correct, and I am informed that he no longer lives in Shreveport, he left there several months ago, permanently.

Q—You have no other connections between him and the SCEF, other than this letter relating to telephone conversations with some of these Directors and personnel?

A—Yes, Senator, Dr. Simpkins was a member of the Board of Directors of the SCEF in 1960 and 1961.

Q—This is what I wanted to ascertain and bring out.

BY MR. ROGERS:

This final letter which I offer in answer to your question, Representative De Witt, is a letter from the SCEF files dated March 25, 1959, addressed to Mr. Robert F. Williams in Monroe, North Carolina, from Carl Braden. Carl Braden, as you know, is a Communist Party member. Robert F. Williams, at this time, was Presi-

February 16, 1961

.003674

Dear Don:

Aubrey has shared with me your latest chapter in the modern version of Job. I declare it does seem that nothing more could happen to you.

Is there anything that I can do to help you financially or otherwise?

It will be a great pleasure for me to be of some assistance, and if you need money, do let me know what is required. There are many who respect and love you and for whom it would be a privilege to share some of your load.

Good luck with your manuscript!

Sincerely,

Mr. Don West ✓

Exhibit 39. Letter from James Dombrowski to Don West, well known Communist Party member.

44-3887-6

March 28, 1959

Mr. Robert F. Williams
410 E. Bayne St.
Monroe, N.C.

Dear Brother Williams:

I plan to be in your part of the country the last week in April and hope that I will be able to see you. Will you be in Monroe about that time and do you think we can get together?

I'm going to be in other parts of North Carolina from about April 20 to 28 and could come down for a brief visit during that period if you are going to be away during the week of the 28th.

The latter would be more convenient for me because I plan to stop on my way into North Carolina.

Please let me know your pleasure on this matter, as I am adaptable to your schedule.

Ann tells me she had a delightful visit with you in Cleveland and I am looking forward to seeing you. Warmest regards from both of us.

Most cordially yours,

Carl Braden

Carl Braden

Copy to George Williams

Exhibit 40. Letter from Communist Party member Carl Braden to Robert F. Williams, Communist revolutionary now in Cuba.

dent of the Monroe, North Carolina, Chapter of the National Association For the Advancement Of Colored People. He later on skipped out of this Country, one jump ahead of the F. B. I., on a charge of aggravated kidnapping. He went from the United States to Cuba, from there he went to Red China where he broadcast propaganda for Mao Tse-Tung, and he then returned to Cuba where he is now, broadcasting the Communist Party propaganda line from Communist Cuba. Evidently he and Carl Braden are personal friends, and have been for some time, according to the tone of this particular letter, which we offer into the record.

BY SEN. KNOWLES:

Let it be received.

BY SEN. MYRICK:

Mr. Rogers, I would like to ask you a question: What about the funds for the SCEF, where do they come from?

BY MR. ROGERS:

Our research has turned up some interesting points on the funds. I offer into the record a letter dated November 20, 1961, from a Mr. George D. Pratt, Jr., commenting upon his contributions to the SCEF. So far as we have been able to ascertain, Pratt is the largest single contributor to this organization. This letter is a letter of transmittal for \$2,500.00 toward the Student Non-Violent Coordinating Committee bail-money, and in it Pratt comments about his allocation of \$5,000.00 a year to the SCEF. In our previous reports we have printed other letters showing that he has contributed up to \$20,000 at a time to the SCEF.

BY SEN. KNOWLES:

\$20,000 or \$2,000?

BY MR. ROGERS:

\$20,000.

The next item, to answer your question, Senator, is a letter from the files and on the stationery of the Southern Conference Educational Fund, dated March 9, 1962, commenting on a fund-raising dinner at the Hotel Biltmore in New York. This letter mentions that about \$12,500 was raised for the Fund at this particular dinner, and it goes on at some length to discuss the financial

affairs of the organization. Its signed by Hubert P. Delaney, and Morris Mogulescu, who are co-chairmen of the New York Friends Of The SCEF. This was Dr. William Howard Melish's operation in the New York area. About one-half of the funds to run this organization are raised right in and around New York City. Mr. Chairman, I offer it into the record.

BY SEN. KNOWLES:

Let it be received.

BY MR. ROGERS:

I next offer a letter from the SCEF files addressed to Mr. Alfred K. Stern, from James A. Dombrowski, dated February 20, 1952. This letter acknowledges receipt of contributions to the Southern Conference Educational Fund from Alfred K. Stern. This one is particularly significant because Stern, identified herein as a contributor to the SCEF, has a very long Communist Front record, and he is currently at this moment in Communist Czechoslovakia where he and his wife, Martha Dodd Stern, are living to evade an indictment pending against them in New York. The indictment was issued by a New York Grand Jury on September 9, 1957, charging them with spying for the Soviet Union. They skipped the Country, and skipped a very large bail, and went to Communist Czechoslovakia where they are now living. The charge in the indictment is that they actually engaged in espionage for the Soviet Union. This letter identifies these people as contributors to the SCEF. I offer it into evidence, Mr. Chairman.

BY SEN. KNOWLES:

Let it be received.

BY REP. STINSON:

Mr. Rogers, are they related in any way to Edgar Stern?

BY MR. ROGERS:

Yes, this is the same family.

The next letter from the SCEF files is a letter to the Southern Conference Educational Fund from a man named Kivie Kaplan, who is a member of the National Executive Committee of the NAACP. He is a contributor to the Southern Conference Educational Fund.



007867

November 20, 1961

Mr. James Donagowski
Southern Conference
Educational Fund,
822 Perdido Street,
New Orleans 12, La.

Dear Jim:

Enclosed is \$2500 towards the SNCC bail money.

What with my shots in the arm to CORE, Alabama Christian Movement for Human Rights, Highlander, United Negro College Fund, Southern Christian Leadership Conference, your special projects, a seven-year pledge to the N.A.A.C.P. paid in a lump sum last week, plus a few odds and ends that do not particularly concern the colored people, I'm running dry.

I realize that this situation is to be in perpetual crisis for some years to come, and in order to more or less keep my support under control, I think it would be best for me to try to allocate \$5000 a year to the S.C.L.C. and not get in on any more crash programs. This is not a firm pledge, but you're likely to get it if the dough is forthcoming.

Glad to hear that you had a spell of pleasant vacation in Florida. We're going to Hopetown, Abaco, in the Bahamas on December 20th for about a month. Very small and quiet place, transportation by foot and bicycle only, and no running water or electricity in our cottage. It ought to be just right.

Sincerely,

George D. Pratt Jr.

Exhibit 41. Letter from George D. Pratt, Jr., large contributor to the SCEF.

Southern Conference Educational Fund, Inc.

NEW YORK AREA OFFICE

908 ST. MARK'S AVENUE, BROOKLYN 17, NEW YORK • INGRESOLL 7-1190

009512

March 9, 1962

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Dorothy Johnson

Dear Friends:

The reception for Carl and Anne Braden at the Hotel Biltmore was a warm and spirited evening.

In spite of uncooperative weather that affected attendance, especially from the suburbs, about \$12,500 was raised for the Fund. In the course of the following week, modest affairs in Philadelphia, New Haven, Hartford, Springfield, Cambridge and Brookline brought in an additional \$2,000.

We were pleased that our main speaker, the Rev. Wyatt Tee Walker, executive director of Dr. Martin Luther King's Southern Christian Leadership Movement, whose plane was grounded in Philadelphia because of the snow, made a successful effort by limousine, train and taxi to get to New York in time to deliver an impressive address.

His presence, along with that of Mrs. Ella J. Baker of the National Y.W.C.A. and Mr. Robert Zellner of the Student Nonviolent Coordinating Committee, was evidence of the close working relationship that exists between our various organizations at work in the South.

Since the reception, we have been shocked by the news that "Bob" Zellner and "Chuck" McDew, chairman of the Student Nonviolent Coordinating Committee, who was also present as a guest at the Hotel Biltmore, are being held prisoner in East Baton Rouge Parish jail, where they went—after the reception—to visit a student committee colleague, Dion Diamond.

These three young men are being charged with "criminal anarchy" under a recently-adopted Louisiana statute aimed at persons engaged in the struggle for integration. Bail for McDew and Zellner has been set at \$7,000 each, and for Diamond at \$11,000. The statute provides for a maximum prison sentence of ten years at hard labor!

The salary of "Bob" Zellner, as a Field Secretary of the Student Nonviolent Committee, has been paid by an outright grant to that Committee by the Board of the Southern Conference Educational Fund.

As the struggle for integration intensifies in the deep South, you will appreciate the need for continuing financial support. If you are among those who contributed at the reception, our thanks to you. If you could not be present, will you send a contribution today.

Sincerely,

Hubert T. Delany

Hubert T. Delany

Maurice McGulacscu

Maurice McGulacscu

Co-Chairman, New York Friends of S.C.R.F.

Exhibit 42. Letter concerning an SCEF fund-raising dinner
in New York, March, 1962.

and this letter is a letter of transmittal for his contribution.

The next letter which is apparently an answer to this last one is dated March 4, 1963, from James Dombrowski to Kivie Kaplan thanking him for his contribution, and it has on it significantly, a hand-written note by Carl Braden, commenting on the fact that the SCEF and Braden had evidently been trying for about 5 years to bring Kivie Kaplan into their sphere of influence. Apparently they were successful, as this letter indicates that he was fully aware of their not having any tax exempt status, which had been taken from them by the U. S. Department of Revenue some years previously. These letters which I have shown you here are a sample of the contributors and the sources of funds. Mr. Chairman, I offer them into the record.

BY SEN. KNOWLES:

Let them be received.

BY REP. STINSON:

Mr. Rogers, has your research developed any connection between the Southern Conference Educational Fund and the NAACP?

BY MR. ROGERS:

There are several very obvious connections. The first item I would like to offer is a photograph of the cover of a brief filed in the U. S. Supreme Court within the last two months by the Legal Defense And Educational Fund of the NAACP, supporting James A. Dombrowski, and the Southern Conference Educational Fund. This is filed in the litigation which is now pending before the U. S. Supreme Court against the State of Louisiana.

One of the lawyers representing the Southern Conference Educational Fund and James Dombrowski, in their litigation against this Committee and this State, is a man named A. P. Tureaud, of New Orleans, Louisiana. He is the counsel for the NAACP in the State of Louisiana, and he is also counsel for the SCEF in this particular litigation. We made a staff study of the interlocking directorate, or interlocking leadership, between the Southern Conference Educational Fund, and the NAACP, and I hold in my hand here a list which we will print in this record. (Off the record comment.) This list of jointly held offices, past and present, in the NAACP and the SCEF, clearly demonstrates that these two organizations are functioning at this time with an interlocking directorate of

February 20
1952

Mr. Alfred K. Stern
R.F.D. 5
Ridgefield, Connecticut

Dear Mr. Stern:

This will acknowledge receipt of your note. Our procedure is to send a letter to our entire list of contributors in January of each year and to follow with a reminder in the month in which their last contribution was made. In your case this would be in December. This will explain why you received an appeal letter so soon after you had made a contribution in December.

We are most grateful for your interest and support. We enclose a release which may be of special interest to you.

Sincerely,

James A. Dombrowski
Director

1/3
Enc.

Original Summary Release

Exhibit 43. Letter from James A. Dombrowski to Alfred K. Stern, currently a fugitive from an espionage indictment in New York.

007891



PATENT RUP. & SUEES (BLACK & COLORS)
HANDSAG PATCH LEATHER (BLACK & COLORS)
SUE SUEES - SMOOTH DRESS SUEES
GLOVE LEATHERS - HANDSAG LEATHERS
SUE LEATHER SPECIALTIES
NATURAL SOLE SUEES - ODEE LYNINGS
SUEE SUEES

COLONIAL TANNING COMPANY, INC.

195 SOUTH STREET • BOSTON 11, MASS.
TELEPHONE - LIBERTY 2-5840 CABLE - COLONIAL BOSTON

February 28, 1963

Southern Conference Educational Fund, Inc.
822 Perdido Street - Room 404
New Orleans 12, La.

Gentlemen:

I am pleased to enclose a small check for the wonderful work that you are doing, and I take it that contributions are not deductible.

I would appreciate a detailed statement of your operations, your income, receipts, budget, etc., as you know, I am very, very much interested in this type of work and would like to know more of your operations, having in mind if possible to be of more help.

Sincerely yours,

Kivie Kaplan
Kivie Kaplan

KK/ip
Enc 1)

ADDRESS ALL CORRESPONDENCE TO BOSTON
• Tanners • BELLEVILLE N.J.
• Japanetics • CANON JUNCTION, MASS.
• Shipping Dept. • BOSTON, MASS.

Exhibit 44. Letter from Kivie Kaplan, Member of the National Executive Committee of the NAACP.

*Jim: It is strange that
he writes at this late date, in
view of our contact with him 5
years ago and his special invitation
to him to come to 1958 reception
and meet Mrs. R. We shall see.*
QB

March 4, 1963. 007890

Mr. Elvin Kaplan
ORIGINAL TANNING COMPANY, INC.
195 South Street
Boston 11, Mass.

Dear Mr. Kaplan:

Thank you for your letter of the 28th enclosing your contribution for \$25, together with a request for more detailed information about SCLC and its operations, income, budget, etc.

I am sending you a copy of our last auditor's report for the year 1961, also our treasurer's report for the year 1962. The auditor's report for 1962 will not be ready until later in the spring.

The schedule of special projects and activities will be of special interest to you.

I am also sending a copy of our latest brochure giving a general description of our work, "A Faith for the South," also one or two other publications which you may find of interest.

I believe I had the pleasure of meeting you many years ago, and, of course, I read about your many activities with admiration and just recently I was rather awe-stricken by a news item that you had garnered in 50 or 75 life memberships in the NAACP in the course of a Western trip.

I wish we might have the benefit of your experience in this field. Of course, you realize that raising money for an agency to which contributions are not deductible is much more difficult, and that is one reason, it seems to me, why you might consider giving us some special help.

I deeply appreciate your interest and would welcome any additional questions about our activities.

Sincerely,

James A. Dombrowski

Exhibit 45. James Dombrowski's answer to Kaplan letter (Exhibit No. 44) Note handwritten note by Communist Carl Braden.

leadership, common leadership. We offer this into the record, Mr. Chairman.

BY SEN. KNOWLES:

Let it be received.

BY MR. ROGERS:

I would like to further offer into the record as a commentary on the litigation which is pending between the SCEF and the State of Louisiana, the covers of two other Amicus Curiae Briefs, filed in the U. S. Supreme Court supporting the SCEF. One of them is filed by the National Lawyers' Guild, and the other is filed by the American Civil Liberties Union. I offer these into the record, Mr. Chairman.

BY SEN. KNOWLES:

Let them be received.

BY MR. ROGERS:

Mr. Chairman, I have another witness I would like to present to the Committee, but I recommend that we take a ten-minute recess before we hear his testimony.

BY SEN. KNOWLES:

So ordered.

10-MINUTE RECESS

* * * * *

BY MR. ROGERS:

Mr. Chairman, we call as our next witness, Dr. William Sorum.

* * * *

THE WITNESS, DR. WILLIAM SORUM, AFTER FIRST HAVING BEEN DULY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP HIM GOD, TESTIFIED AS FOLLOWS:

IN THE
Supreme Court of the United States
October Term, 1964
No. 52

JAMES A. DOMBROWSKI, *et al.*,

Appellants,

—v.—

JAMES H. PYSTER, *etc., et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

**MOTION FOR LEAVE TO FILE BRIEF AMICUS
CURIAE AND BRIEF AMICUS CURIAE**

JACK GREENBERG

DERRICK A. BELL, JR.

*Counsel for NAACP Legal Defense
and Educational Fund*

10 Columbus Circle

New York, New York 10019

ANTHONY G. AMSTERDAM

JAY H. TOPKIS

Of Counsel

Exhibit 46. Cover of brief by the NAACP supporting the SCEF.

NAME	NATIONAL OFFICE IN THE NAACP (1964)	OFFICE IN THE SCEF
Bishop Stephen Gill Spottswood	Chairman, Board of Directors	Board of Directors 1961
Russcoe Dunjee	Vice President	Board of Directors 1961
A. Phillip Randolph	Vice President	Conference Sponsor and Consultant - 1940-1942 (SCHW)
Dr. Benjamin Mays	Vice President	Vice-President 1951
Bishop W. J. Walls	Vice President	Petition Signer and Conference Sponsor 1955
Hubert T. Delany	Executive Committee	Co Chairman N. Y. Friends of SCEF
Kivie Kaplan	Executive Committee	Contributor
Earl B. Dickerson	Executive Committee and Board of Directors	Protest Signer 1954
C. Herbert Marshall	National Health Committee	Board of Directors 1964
Arthur J. Mandel	National Legal Committee	Declaration Endorser 1948
Shad Polier	National Legal Committee	Member N. Y. Friends of SCEF
Louis L. Redding	National Legal Committee	Board of Directors 1962
Arthur D. Shores	National Legal Committee	Letter Signer 1958
A. P. Tureaud	National Legal Committee	Legal Counsel 1964
Bishop Edgar A. Love	National Life Membership Committee	President 1964
Clarence Laws	Southwest Regional Secretary	Executive Committee 1947 (SCHW)
L. C. Bates	Field Secretary	Board of Directors 1964

Exhibit 47. List of various National Officers of the NAACP showing their office or connection in the SCEF.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1964

—
No. 52
—

JAMES A. DOMBROWSKI, ET AL.,

v.

JAMES H. PFISTER, ET AL.

—
On Appeal from the United States District Court
for the Eastern District of Louisiana,
New Orleans Division
—

**MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE
IN SUPPORT OF APPELLANTS BENJAMIN E. SMITH
AND BRUCE WALTZER**

AND:

**BRIEF OF NATIONAL LAWYERS GUILD AMICUS CURIAE
IN SUPPORT OF APPELLANTS BENJAMIN E. SMITH
AND BRUCE WALTZER**

—
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National Lawyers Guild
Amicus Curiae*

PRINTED BY BYRON S. ADAMS, WASHINGTON, D. C.

Exhibit 48. Cover of brief from the Communist Front "National Lawyers Guild
supporting the SCEF.

Supreme Court of the United States

OCTOBER TERM, 1964

No. 52

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE
EDUCATIONAL FUND, INC.,

Plaintiffs-Appellants,

BENJAMIN E. SMITH and BRUCE WALTZER,

Intervenor-Appellants,

against

JAMES H. PFISTER, individually and as Chairman of the Joint
Legislative Committee on Un-American Activities of the Lou-
isiana Legislature, RUSSELL R. WILLIE, individually and as
Major of the Louisiana State Police Department, JIMMIE H.
DAVIS, individually and as Governor of the State of Louisiana,
JACK P. F. GREMILLON, individually and as Attorney General
of the State of Louisiana, COLONEL THOMAS D. BURBANK, in-
dividually and as Commanding Officer of the Division of Loui-
siana State Police, and JIM GARRISON, individually and as
District Attorney for the Parish of Orleans, State of Louisiana,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

MOTION FOR LEAVE TO FILE AND BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION AND THE LOUISIANA CIVIL LIBERTIES UNION, *AMICI CURIAE*

LOUIS LUKY
435 W. 116th Street
New York 27, N. Y.

MELVIN L. WULF
156 Fifth Avenue
New York 10, N. Y.

LEONARD DREYFUS
5440 Bellair Drive
New Orleans 24, Louisiana

Attorneys for Amici Curiae

PAUL STOK ADLER,
Of Counsel

Exhibit 49. Cover of brief from the "American Civil Liberties Union" supporting
the SCEF.

BY MR. ROGERS:

Q—Please state your name for the record, Doctor?

A—William Sorum.

Q—You are from New Orleans, Doctor?

A—That's right.

Q—Are you appearing here today voluntarily in response to a request by the Committee?

A—That's right.

Q—Are you the same Dr. William Sorum who appeared before the House Committee on un-American Activities in New Orleans on February 15, 1957?

A—Yes, sir.

Q—And testified then as a cooperative witness concerning your former membership in the Communist Party?

A—That's right.

Q—During what period of time were you a member of the Communist Party?

A—From approximately 1945, when the Party was reorganized in this country; I was active in what you might call the "Front Outfit", "Citizens for Progressive Education," or something like that which was the defacto Party until they reorganized the Party, and reformed it, and at that time I entered it. Then, roughly about late 1951, having been in bad graces for some time, finally I formally quit, and was put out about the same time.

Q—What office or position of leadership did you hold in the Party?

A—I was at one time Youth Director, I have been Educational Director for the Party at one time. I was a member of the State Committee of the Communist Party, and a group within this called the Secretariat as well. I worked in the Party, as well, on the Committee on Organization.

Q—Dr. Sorum, in your 1957 testimony, you identified some 42

people that you knew personally as Communist Party members, and stated that you estimated that at one time there were about 250 Communists in the New Orleans area, is this correct?

A—That's approximately right.

Q—You also gave the Committee other information in Executive Session at that time, didn't you?

A—That's right.

Q—I believe you also testified in 1957, while you were in the Communist Party, you were told to work in the Southern Conference For Human Welfare, is that correct?

A—That's right, it was one of the main organizational outlets, and it was considered one of the most important things that we had. When the Southern Conference For Human Welfare had their National meeting down here, about 12 of the top Communists in the South were here—of course not actively as Communists, but we did meet by ourselves to discuss how the meeting of the Southern Conference should be conducted and run. The leader of the Communist group at the time of the Southern Conference For Human Welfare meeting was Nat Ross who was the head of the Communist Party in the South. Tex Dobbs, who at the same time was sitting in the Chair of the Southern Conference For Human Welfare meeting at different times, was another Communist Party member. I think it was a 2 or 3 day meeting, and Louis Burnham was also here. He was one of the top Negro leaders in the Communist Party. I think that was the time when Goff was here.

Q—Irving Goff?

A—That's right, I think he was here. The Communists met separately to discuss the policies of the organization, how best to guide it along and influence it.

Q—By organization, you mean the Southern Conference For Human Welfare?

A—Yes, most of whose members, of course, were not Communists. Many, as well as some of the names you mentioned earlier, were people who you might say were fellow travelers, and some of them who were not even that, who honestly shared what they considered a democratic viewpoint. The Communists were running this organization, actually pretty much in the meetings, as well as

having their own meetings to determine policy.

BY SEN. MOORE:

Q—Dr. Sorum, I would like to ask you if the Communists actually organized this organization?

A—I don't think they actually organized it, I think it was a setup that was quite easy to get into. You see, sometimes they would enter existing organizations and slowly take them over, like we did in New Orleans with something called the New Orleans Youth Council. It was organized quite separately through non-Communist sources, which we just worked harder and took over; and ran sort of completely along the same kind of lines. That was a local, limited operation. The Southern Conference, I think from the beginning, must have had important people in it because it was important enough where a lot of trade-union leaders who were Communists were giving orders to get their people active in it. Everybody that was in the Communist Party was pretty active in this thing, and the intellectual climate around there among the inner circle was strongly Communistic. I can remember sitting in the office when they were setting up the offices of the Southern Conference on Perdido Street here in New Orleans. There were people typing out different notes, and there were volunteers working there, mostly non-Communist, but a few of us that were Communists were there speeding things up. I remember one fellow telling me what a great future this group had, that it was a rudimentary office now, but it probably was a rudimentary office in Russia in 1918.

Q—Would there be any significant turnover of membership, the original members of these organizations, when it became apparent that the Communists had infiltrated and were actually directing the policies of the organization?

A—Well, different people have different levels of awareness of these things. The Communists have been successful in selling to many honest people the line that "red baiting" is an attempt to obscure, so some people would get out early frightened by the charge of Communism. Others would wait longer and then see what was going on and then get out, but certainly they lost a lot of mass support after the Congressional hearings. I think it was in 1947 that Governor Ellis Arnall came here at the invitation of the Southern Conference where he made a strong anti-Communist speech and so upset a tremendous amount of people. He mentioned that he had heard rumors about Communism in the organization. He gave a strong

anti-Communist, anti-Soviet speech, as a liberal, which upset a lot of the people tremendously. There was a lot of grumbling among certain people about this. The position of the leadership of the Southern Conference itself—I don't mean of the Party—was mostly that they would say that they would work with anybody. I guess it was an old-fashioned approach to what was a good liberal approach. "We welcome anybody regardless of who they are." They never deviated in this no matter what was said or pointed out.

BY MR. ROGERS:

Q—The Party itself was using the Southern Conference as a front, wasn't it?

A—I would say it was essentially a Front Organization, it was a mass organization that was an important thing to the Party, and was going to be an instrument of the Party gaining control in the South. They would want to do two things with it: One, of course, you would always want to recruit into the Party youthful, active people to be drawn into this with limited aims. Recruit into the Party, that's one thing. The other thing is to have an organization like this going, fulfilling some of the Party's objectives on a limited basis, as a Front Organization.

Q—Dr. Sorum, did you continue to belong to this organization and work with it until the time you left the Party?

A—Pretty largely, but before I left the Party, for a couple of years I was considered in some mild way as a security risk inside the Party. I don't know whether I should put this in the record or not, but after I was taken down to a Hearing in 1949, at the Grand Jury Hearing, I was then getting pretty "hot," and I also was feeling some discontent which was obvious although I continued to follow directions and rules, and argued on certain issues. I had less to do with these things, and I wasn't really active in the Southern Conference Educational Fund. However, I remember when the Educational Fund was set up and the Board of Directors chosen. I can't remember all of the names, but I am sure of the fact that 3 of the first 5 of the people on the list I knew to be Communists, 2 of whom were Doctors, I think Dr. Obrinsky and Dr. Hodes who I identified in 1957, and there is another one whose name I don't remember. I think he might be out of the Party by now anyway, but he was a Professor at some University.

BY SEN. MOORE:

Q—Dr. Sorum, how were you first aware that you were being considered by the Party members to be sort of an outsider on the inside at the time; and how were you officially expelled, or dismissed from the Party?

A—I was actually sort of disenchanted from it, but I think the crucial point happened about 1948 or 1949 when James Jackson, who is one of the top heads of the Party, said that as a Doctor, when I graduated from school, I should go into work in the Rural South. He didn't approve of me going into Psychiatry. He didn't exactly order me to do this, but I think they were disappointed in the decision I made to go into Psychiatry; they regarded Psychiatry as kind of suspect. You know they lost a lot of people who were interested in that field. They like their own Psychiatry. I think from that time on, I was looking to them like a "Bourgeois Intellectual."

BY SEN. KNOWLES:

Q—May I ask a question, Doctor? When were you first approached by some member of the Party to become a member of the Party, while you were in Medical School?

A—No, it was before then, I was in the Service, and I just began talking to different people, and they introduced me to people here in New Orleans, and I was transferred here and I just sort of got in this orbit. I guess the first known Communist I met was Emmanuel Levine. I went down to his office and read some of his literature and talked to him. He was the "Director of Progressive Education," or something like that.

BY SEN. MOORE:

Q—Was this because of your own personal interest?

A—I was interested in certain issues and they utilized my concern on these issues to draw me into these things.

BY MR. ROGERS:

Q—This is the standard pattern, isn't it, Doctor?

A—Yes, I was kind of idealistic, and interested in certain things, I had no religious background, I was looking for causes, and had a strong belief in democracy. They told me that this wasn't possible under the American system of exploitation, and that the race issue could never be solved through the capitalistic system, and that sort of thing.

Q—Isn't this generally the pattern that all the Fronts, including the SCEF, used to bring dupes and innocent people into the Party work?

A—That's right.

Q—Doctor Sorum, you mentioned you remember when the SCEF was set up from the SCHW; as a matter of fact, they just continued the same function under a different name in the same offices, didn't they?

A—I think this was essentially so, I think they just continued as a more of a shoe-string operation after they lost their wide-base importance as a result of the Congressional hearings. There is no doubt that the attacks on them cost them a lot of their membership. I feel they just sort of changed their name and then continued on a more shoe-string basis, on a more limited basis. I have the feeling also—this is only my feeling—that they tried less to be a mass organization and more of what we might call a transmission organization. This is only my own theorizing. Then they would work into other groups, in an attempt to influence other groups they didn't control, and in an attempt to look more respectable. They would work their individuals in with other groups and make it look to liberals like they were active and doing the same thing that more respectable groups would do.

Q—Who was the Executive Secretary for the Southern Conference For Human Welfare, and the Executive Director of the Southern Conference Educational Fund during the time that you, as a Communist Party member, worked in and with these organizations and used them as fronts?

A—Dr. Dombrowski was active during all of that time.

Q—Is he still the Executive Director of the SCEF?

A—To my knowledge, yes.

BY SEN. KNOWLES:

Q—Is that Dr. James Dombrowski?

A—Yes, sir.

BY MR. ROGERS:

Q—Do you know him, Doctor?

A—Yes, I had met him many times, I never was introduced to him in any Party connection, but only as a member of his organization. I met him a lot socially, and a lot in organizational work, not as a Communist; I never talked to him as this, and I never presented myself to him as this.

Q—However, the function that he was carrying out was clearly the function directed and provided by the Party, was it not?

A—Right. I was never at any meetings of a Communist nature with him, and never thought of him as a Communist; but I did think of him providing a friendly atmosphere in which—well, he certainly was not an anti-Communist, anyway, and he took the position that anybody was welcome in his organization.

Q—Did you know Paul Crouch?

A—No, I never did know him.

BY REP. DE WITT:

Q—Doctor, did you know Dr. Dombrowski as a Communist?

A—No. I never knew him as a Communist. I didn't consider him as one, we just considered him sort of—well, speaking for myself in retrospect, I guess you would use the word, "fellow-traveler," but he never made anti-Communist statements, or anything like that, he never was opposed to the Communist Party. I think he has made statements even in recent years that anybody is welcome in his organization.

BY SEN. MITCHELL:

Q—But you did meet him at these meetings?

A—At a lot of social groups, and of course, at the Southern Conference itself. I went to many meetings of the Southern Conference, and met him over a period of years.

BY MR. ROGERS:

Q—This was before Dr. Dombrowski was identified in New Orleans by Paul Crouch and John Butler as a Communist, wasn't it?

A—I have seen him after that time. I saw him after that time when I was invited to a meeting. I wasn't actually in the Party at

the time, but still knew people and they invited me to a party after the Crouch meeting.

BY SEN. MOORE:

Q—Doctor, would you elaborate on the term, "fellow traveler" a little?

A—Many people who are this way may not agree with what they are, but they are more or less someone who can be depended upon to follow a line that is not hostile to the Communist Party. I know many people who would loudly say that they are not Communists, and yet they can be counted on in certain ways to do certain predictable things because of the ideology they have. There are a lot of people who were in the Southern Conference who were not Communists, who regarded themselves as strong liberals, who were not true liberals, I would say, because they would be more or less agreeing with what the Communists' policies and positions were. I feel that a true liberal would have to oppose Communism essentially. He would have to be opposed to anything of that conspiratorial nature.

BY MR. ROGERS:

Q—Doctor, has the SCEF and the SCHW been successful in carrying out the Party aims?

A—Well, I would imagine they have. I was just listening to some of the testimony and you mentioned the names of a lot of people I am sure certainly are not Communists, but the "fronts" are able to get these peoples' names listed on letterheads, and all that. Also I recognize that interspersed were some of the old names that I recognized from the old days, people probably who are Communists, or under Communist discipline. So I think they have been able to use a lot of honest people probably as "patsies."

Q—Isn't this the prime function of such a Front, to take peoples' idealism and through it bring these people into the sphere of influence of the Party itself?

A—That's one of the functions the way the Party looks at it. I can't answer how Dombrowski, himself, might have been looking at it, he may very well believe in the job that he is doing, but I do know that the Communists would regard this group—they certainly did regard this group in my time—as the crucial mass organization to use in this area.

Q—Dr. Sorum, the Committee doesn't want to pry into your personal views, or opinions, but so that we might evaluate your testimony about the Southern Conference Educational Fund, would you mind telling us your views on ségregation of the races?

A—Well, I am against that. I feel that on moral grounds and as an American citizen, I like to deprive the Communists of one of their best issues, and make Citizenship rights available to everybody.

Q—Has it been your experience that the racial issue has been an effective cover for recruiting unwary, idealistic people into Communist Front activity?

A—Yes, myself for instance. I mean, this is one of the big things they use. They claimed that only the Communists are fighting on this issue, and they would try to worm into every organization that fought on this issue. They controlled the National Negro Congress which they tried to set up against the NAACP because they couldn't control the NAACP. They controlled and managed the Southern Negro Youth Congress, and on the same basis they set up the Civil Right Congress in opposition to American Civil Liberties Union. The money that all of these groups raised was usually funnelled into Communist causes and Communist things. I don't think they were sincere about the racial issue. I felt they were just using it as an issue, not to get anything done to help anybody, but to really just exploit a situation that was there.

Q—Were you ever able as a member of the Party to transform your idealism towards helping mankind into any really useful action?

A—No, I think it was all a travesty. I think the Communist Party, as such, is a threat, and it's a conspiratorial organization. I honestly feel by the theoretical ideas involved that it's sort of an inhuman, cold kind of thing, and it exists only to promote its own ends.

Q—Is there anything that you wish to add to your testimony, Dr. Sorum?

A—Well, I do think that it's incumbent upon the people in the Civil Rights Movement, as well as liberals in general, to realize that Communism is certainly not an ally, but an enemy. I feel strongly that honest conservatives should be against the extreme right, thus I think certainly the honest liberals should be against the extreme left, and I think any progress would certainly come through moder-

ate discussion between the true conservatives and true liberals who respect each others' rights as individuals and will realize that nobody is going to ever be completely happy.

BY REP. DE WITT:

Q—Doctor, during your tenure with the Communist Party, did they openly advocate the overthrow of the Government of the United States?

A—Well, they never put it that way, the language was a little different. In other words, you want to effect social change, you are working toward this, and to openly change is revolutionary in its nature; but we would always regard that as a slogan somebody was using against us. The Party members would say, "certainly not at this time," but then the theory is, "wait until we become strong enough." The idea then in Communist theory is, "since the change is not being made, it then becomes necessary to move to revolutionary tactics." The Party itself is always a Revolutionary Marxist Party which is going to build on problems of this culture; and not to solve the problems, but to dissolve the culture into a Proletarian culture.

BY SEN. KNOWLES:

Q—Would it be necessary to have an Army of Party members to accomplish this?

A—No, not at all.

Q—Could it be a few Party members?

A—A few people influencing a lot of other people could go a long way, and can seize the situation, and move people in that direction. That's the reason to get into a lot of other organizations that aren't Communist at all and be able to guide their influence. We were all told to join a Church toward the end, to be Church members, and to be active in the Church; so if anybody exposes us we would say, "No, he is a Church member." Most of us did do this.

BY REP. STINSON:

Q—Did they tell you which Church to attend?

A—No, they wanted us to join a Protestant Church as a rule, because they felt that they couldn't make headway in the Catholic Church at all. The Catholic Church is strongly opposed to the

Communist Party. But if you were a member of the Catholic Church, try to be active in it if possible; but if you were not a member of any Church, try to join some Protestant Church. Often they would join a humanistically oriented Church and become very active in that. A couple of Churches did draw a lot of people.

BY SEN. MOORE:

Q—Would you say that they wanted you to join Protestant Churches because the Protestant memberships have more individualistic ideas and notions?

A—Yes, it was more for protective cover at that time. At that time the Communist Party was put in groups of 3, each branch had only 3 people in it, and they were just looking for protective cover; but also for any place that they could influence the idea of "peace." "Peace" was an issue at that time, and of course, nobody was logically opposed to peace. This was to be used in Churches as a big rallying cry, and this was considered a good issue for a Church, regardless of the right or wrong of the issue. All of these issues were used eventually for the Communists to exploit, rather than to solve the peace issue or the Negro issue.

BY SEN. MITCHELL:

Q—Doctor, did they also encourage you to establish yourself in a position of influence and authority in the field of, say, education, and in the news media?

A—They would want you to work hard in any group you were in. Naturally they would want you to work in any organization even if it was a purely Bourgeoise organization as they call it. In other words, by that I mean, not a "Front" organization. For instance, if you were in the Kiwanis Club, they would like for you to influence people. Anything that you could belong to, they were all for it. They were advising some people to join some Veterans' groups. Most of them decided to join the American Veterans' Committee, which was not Communist, but the Communists made a strong fight to gain control of it for awhile. There wasn't much point in joining the American Legion except in certain places where they could control it, like they did actually control a couple of branches. Now, on this issue there is a peace organization called "SANE," most of whose members certainly are not Communists, but the Party succeeded apparently in grabbing off one of the headquarters of this organization to where SANE had disavowed it. This gives you an

example of how the Communists work. This organization did disavow the Communists, and I think it's an important thing to do because otherwise the good work that the organization might be interested in would be subverted merely to use by the Communists in recruiting and exploiting the issue. They might take up a just case, but that was not for the position of anything but presenting to the Negro people that they were working for them.

Q—Doctor, did you ever hear at any of these meetings a discussion of the activity of this Committee, or similar Committees?

A—Oh, sure.

Q—I would like to know a little bit about the comments they made, and the attitude they had?

A—Mainly, it was to avoid getting caught, techniques to keep out of the way, and that sort of thing. At that time there wasn't so much going on at the State level; I suppose it existed for all I know, but they were concerned with groups that were investigating them. They were very much frightened by Citizens' groups led by Mr. Trapolin in New Orleans, and people like that. He is a Liberal who was investigating; he was strongly anti-Communist and they were concerned about him, trying to discredit him. One thing they do in all of these groups is to try to accuse all of the anti-Communist groups, such as Legislative Committees, of being highly reactionary or racists. The idea is to obscure the issue. If you are against me, you are against me because you are a Negro hater, or a racist, or something, and not just because you are an anti-Communist. Sometimes you will find people that do feel that way, and they will be held up to public scorn. For instance, if there is a figure that seems to be notorious, and who is anti-Communist, the Party will keep talking about it.

Q—In other words, a lot of these moral questions that were raised by them were simply raised to cloud the real issue of injection of Communism, or non-injection of Communism?

A—Yes, I remember a famous speech by somebody which mentioned that Al Capone once made a speech against Communism. The Party said, "This is an example of the kind of thinking of anti-Communists."

BY REP. STINSON:

Q—In what period did you belong to the Party?

A—When it was reconstituted, and my period of heightened activity in the Party was up to about 1949 or 1950, and then I sort of hung on in the Party about a year or so more.

Q—When did it begin?

A—It began in Louisiana as the official Communist Party, but it existed for many years in the State, but it began again after the War in 1945, following the Duclos letter, in which the French Communist Party criticized the American political system. The Americans then reorganized into a Communist Party.

Q—During the time that you belonged, concerning the activities you helped them in, did they provide you with funds to do that?

A—No, we had to raise all of our own money. Of course, there were lots of ways of getting money, one was through front-groups that carried on the activity; but the Communist group itself had little money coming in. They were all low-paid, but most of us who did a lot of work for the Party never were paid anything, we were just dedicated. I guess, in a sense, you might say—it's more like a religion. You believe the thing like you believe a religion, and to me it meant everything in the world because I was looking for a faith, something to belong to.

BY SEN. MITCHELL:

Q—Were these fund-raising activities carried on under the guise of some other cause or reason?

A—Yes, but the Communists couldn't tap a lot of that money directly for party-use. They would get a lot of work done and advance themselves by, for instance, the New Orleans Youth Council. We raised a lot of money there, but we were really doing work for the Party. I was active there, I ran it after a while, and we actually were doing work for the Party; and recruited widely into the Party from this group, most of which were not Communist at all. Then the organization lost its impetus, and we drifted out of that to look further for new organizational forms. We would use one thing like that at a time, and when it would become no longer useful, we would abandon it, and take another one.

BY REP. STINSON:

Q—Was New Orleans the State Headquarters of the Communist

group?

A—That's right.

Q—Did you have many members in North Louisiana?

A—There were some Communists in North Louisiana and Central Louisiana. I addressed a group of share-croppers at one time in one of the Parishes about 50 or 60 miles from here.

BY MR. ROGERS:

Q—Did you ever know Sergeant Caulfield in that respect?

A—Yes.

Q—As a Party member?

A—Yes, I don't know if he still is or not.

BY REP. STINSON:

Q—In any of your investigations, were you given a list of the Communists of Louisiana that you knew when you were in there as a member?

A—I didn't know all of the Communists of Louisiana, but I knew all of the leadership in Louisiana that was in the Party organization, and the House Un-American Activities Committee had a meeting here in 1957 in February, and I was present at that meeting, and I talked to them then.

Q—Have there been any results from the Communist Party, as a result of your testifying at the 1957 Hearing, any threats or anything like that?

A—I have gotten threats from different people, but it was from people, I don't know if they were necessarily Communists because there were all kinds of other people calling up, too. I had to discontinue a phone because day and night I would be awakened by people calling up, obscene telephone calls, or just breathing into the phone. Sometimes they would call me a Communist, and said they knew I still was. There was a Church I belonged to in which people went around telling the Conservatives that I was still a Communist. They also went around telling the Liberals that I was anti-Semitic, and anti-Negro, and that I was an F. B. I. agent. At no time have I ever received any remuneration from anything like

that. I volunteered to make a public statement as a moral issue. I felt it was incumbent upon me, having made this mistake to admit it, and do what I could to rectify it and fight the Communist Party.

Q—The Communists actually are not too much in favor of the Negro race, except as a tool?

A—This is an important issue they can and do use throughout the world to discredit the United States. I imagine that as bad as things are for the Negroes, that the Negro in the United States is better off than anybody in Russia, certainly better off than anyone in China. We should solve our own problems here in America and we don't need any Communist advice or interference, especially in view of their own record of deceit, cruelty and intolerance.

BY SEN. KNOWLES:

Dr. Sorum, on behalf of the Committee, the State of Louisiana, and the United States of America, we express our appreciation for your coming up here and giving your testimony. I think you should be commended, not because you became a Communist and got out of it, but because you have come back to being a good citizen and seeing your wrongs, and you have tried to do something about it. That's a failing that many Americans have today. They know they are wrong, but they don't want to do anything about it. We thank you very much, and we respect and commend you for your sincerity and honesty.

BY MR. ROGERS:

Mr. Chairman, I have no further evidence to be offered to the Committee today.

BY SEN. KNOWLES:

This Committee Hearing is closed at this time.

MEETING ADJOURNED

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CONCLUSIONS OF THE COMMITTEE

The evidence presented to the Committee in this hearing forcefully confirms the prior findings of the Committee that Southern Conference Educational Fund is in fact a Communist Front organization and is a subversive organization because it is aiding and abetting the Communist Conspiracy. We do again so find at this time, the SCEF is being managed by some 14 or 15 people, at least 5 of whom have been previously identified as Communists. Through the operations of the SCEF, the leadership and influence of these Communists is transmitted to several other organizations. This is done under the guise and cover-story of integration of the races and "civil rights". These issues furnish the emotional appeal to blind the unwary idealist to the facts about the SCEF. Fortunately, several influential liberally oriented individuals and organizations such as Mrs. Eleanor Roosevelt, Ralph McGill and the AFL-CIO, have correctly evaluated the SCEF for what it really is, and have set a good example by withdrawing their support from the SCEF. We urge others who have deluded themselves about the SCEF and its leadership to do the same.

The planned program of the Communist party to use the racial issue to further its goal of revolution in the United States has been carried out to a substantial degree. The SCEF has been an obvious and effective part of that program. The main function of the SCEF has been that of a "transmission belt" between the active Communist Party, represented by the leaders of the SCEF, and the so-called "civil rights movement". Through the SCEF, various "civil-rights" organizations such as the Student Non-Violent Coordinating Committee and the National Association For The Advancement Of Colored People have been substantially infiltrated and influenced by fellow-travelers and dupes of the Communist Party. This will be hotly denied, but the facts brought out in this hearing speak for themselves, and we invite those who read this report to examine the evidence in detail and draw their own conclusions. We do not suggest that everyone in the "civil rights movement" is a Communist, but the fact of Communist infiltration of the movement is a fact, and not conjecture.

The Committee has stated in all its previous reports that "rights" do not exist without equal "responsibilities", and one of the prime responsibilities of citizenship is to recognize and reject the false leadership of the Communist Conspiracy. The problems that face the people of this State and nation can and must be solved within the framework of the Constitution. Whatever differences of opinion may exist in the minds of American citizens, practically all of them, both black and white, agree that we do not need the leadership and interference of the Communists to solve our problems.

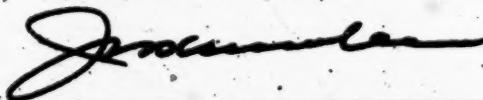
The testimony of Dr. William Sorum shows how a "Communist Front" operates and even more important, shows the aims and functions of a "front" for the Communist Party. They are twofold: first, to recruit dupes, fellow-travelers and members for the Party, and second, to carry out specific Party goals. Dr. Sorum is the first witness since 1954, with a background of actual Communist Party Membership, to testify concerning the role of the Communist Party in infiltrating, taking over and managing the Southern Conference Educational Fund. He is to be commended and praised for his courage and good citizenship demonstrated by his extremely important testimony before this Committee. His testimony makes it clear beyond any doubt, that the SCEF has for many years been simply a tool and a "front" for the Communist Conspiracy.

The 26 year history of open operations by the SCEF and its predecessor, the Southern Conference For Human Welfare, demonstrates the ineffectiveness of Federal legislation and enforcement in the control of Communist Fronts. It appears to the Committee that the subversive functions of a Communist Front should be treated as crime and regulated by the States the same as practically all other kinds of crime. The SCEF has pending at this writing, litigation against the State of Louisiana, asking the United States Courts to rule that no State has the right to legislate against any subversive activities which involve Communists or Communism. We shall soon see what the final result of this litigation will be, the State having prevailed up to this point.

In conclusion, the Committee wishes to state that the keynote of

freedom is the personally responsible individual citizen. If citizens ignore their responsibilities, their freedoms cannot be effectively protected by government at any level. The ultimate solution to the problem of Communist Fronts and other subversive activities lies in an informed and responsible citizenry that will refuse to be duped and used through their own idealism to further the goals of Communist revolution.

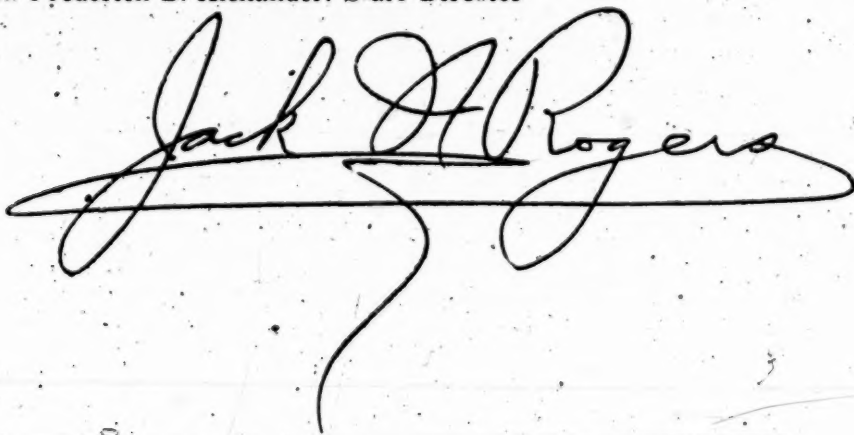
Respectfully submitted,



Jesse M. Knowles, Chairman,
Joint Legislative Committee On
Un-American Activities, Senator,
Allen, Beauregard, Calcasieu, Cameron
and Jefferson Davis Parishes

Senator Jesse M. Knowles, Chairman, Allen, Beauregard, Calcasieu,
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